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on
Metropolitan Toronto

Local Decision-Making and Administration

Research Report

LOCAL DECISION-MAKING AND ADMINISTRATION

A Study for the Royal Commission

on Metropolitan Toronto

by

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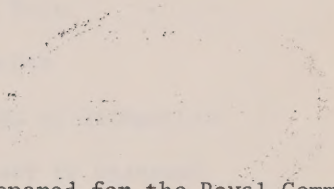
The conclusions contained in this study do not necessarily constitute findings of the Royal Commission on Metropolitan Toronto.

LOCAL DECISION-MAKING AND ADMINISTRATION



This report, prepared for the Royal Commission on Metropolitan Toronto, examines the legal framework of municipal policy-making within the context of provincial-municipal relations.

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SUMMARY

This report is concerned with the powers of local government and with the exercise of those powers. Both of those areas are severely constrained by provincial law, and this report concludes that many of those constraints ought to be eased.

While the discussion on the power to delegate is a discussion about the exercise of power, it necessarily touches upon the other side of the coin, which is the scope of power granted to the municipality in the first place. A useful image is to think of the municipal council as the narrow neck of an hour glass. The sand in the top of the glass represents the fields of activity over which the province has given the municipality power to act. The bottom half of the glass represents the ways that the municipality has available to it to actually exercise that power. Some of the present problems relate to not enough power being put into the top half of the glass. Others relate to the municipality being very restricted in the ways it can go about filling up the bottom half of the glass. The power to delegate, or rather its lack, seems to us to be the most significant restriction on the way that powers can actually be exercised.

While the hour-glass image ought not to be carried too far, it provides a number of insights. The amount and quality of sand in the top half clearly affects its operation. All sand must go through the neck, which is the municipal council, and that takes time. When sand does pass through, it is not permitted to spread out into the bottom of the glass, it must fall in a clear vertical stream, straight down to the bottom. One can conceptualize a broader power to delegate as a device that would permit the council to direct the sands of power in particular and specific directions.

This report examines both the top and bottom halves of the glass. The conclusions which it does reach about the top half are that the areas of municipal jurisdiction should be much more broadly defined. It points out that the power to "regulate" a specific sphere of activity has been very narrowly interpreted by the courts. Rather than being construed as a general grant of power, permitting a variety of regulatory devices to be created, the power to regulate permits certain forms of by-laws to be passed by the council, and nothing more.

The report deals in great detail with the bottom half of the glass. The first section of Chapter I describes the present state of the law concerning delegation. The discussion begins with a consideration of the municipality's power to delegate because, in the authors' view, that is the central issue concerning the exercise of power. At present, municipalities are required to exercise most powers by way of a by-law passed by the municipal council. That requirement hampers administration. It also hampers decision-making in as much as it requires the council to focus its attention on a vast number of minor matters.

It must be recognized that problems of delegation only arise when municipal councils or any other governments delegate the power to exercise discretion. It is possible to create administrative structures that can function where no discretion is involved. A by-law can and does provide that when building plans are submitted to the building department which comply in all respects with the building and zoning by-laws, and when a fee is paid, then a building permit shall be issued. Thus no discretion is exercised in the issuing of the permit.

The sensitive areas are those of discretion. Which employee shall be promoted, or which person hired? Upon which issues shall the planning staff concentrate its energy? Which tender for the construction of sewers shall be accepted? Which applications for house repair loans shall be accepted?

Sometimes, and after some experience, those issues can be reduced to firm rules and can become purely administrative matters, but we believe ongoing experience is often vital to the writing of rules. For many years, and until prohibited from doing so by the courts, the City of Toronto required buildings to contain such fire prevention equipment as the Fire Chief demanded. When the City was required to enshrine the matter in a by-law rather than leaving discretion with the Chief, it at least had some years of fire department experience to rely upon. Drawing up a code of rules is very difficult without such experience.

So too is experience with the exercise of discretion required if a municipal government is to develop appropriate formal policies to meet its needs. Consider, for example, the variety of programs now offered by three separate levels of government and designed to provide assistance to homeowners in repairing their houses. Most programs provide for the home-owner's income and the cost of repair being ascertained, and grant either a scaled-down rate of interest or an absolute forgiveness of part of the loan. Some programs are designed to assist people in particular geographic areas with a view to upgrading standards in those areas. In order to design a program in advance, a council would have to develop elaborate rehabilitation standards, ascertain the incomes of those owning substandard housing in the area in question, estimate the cost of repairs of those houses inhabited by persons in various low-income categories, estimate the extent to which applicants might respond to the program, and finally strike a budget. By the time all of that had been done, the neighbourhood might have burned down, or it might be found that the program as finally adopted was not a sufficient incentive to actually encourage the rehabilitation which was desired.

A far faster, cheaper and more practical approach would be to set aside a sum of money for rehabilitation loans; authorize an official to accept applications and assess the needs of applicants; direct a committee of council to make loans within the budgeted amount and with some guidelines as to the income ranges to be benefited and ask the committee to report from its experience on more detailed guidelines. After some loans had been processed and a number of applicants had been interviewed, more precise programs could be adopted.

Municipal councils presently have no power to delegate those discretions to either committees or officials. They cannot permit or restrict front yard or on-street permit parking on the basis of the wishes of the residents on the street as transmitted to and arbitrated by a council committee. They cannot leave the disposition of cultural grants up to a body such as an arts council. Each council must make rules of general application, covering each anticipated situation, and then watch the unanticipated situations come face to face with the rules. When one compares the municipal situation with the powers given by the legislature to the bodies it creates and to the ministers of the Crown, one wonders that the process of local government is able to go on.

Nevertheless, the report also concludes that there are very real public purposes which are sought to be served by preventing municipal councils from delegating their authority. These purposes are to ensure that legislative authority is exercised only by those bodies to which it is given and thus to ensure open and fair government in accordance with the rule of law. However, those purposes can be served by a variety of other means. It should be noted that the legislature frequently feels the need to delegate power, whether to a minister, a civil servant such as the Superintendent of Insurance or a body largely unconnected to government, such as the governing body of a profession or an arts council. The report therefore considers ways in which delegation might be permitted while maintaining an emphasis on the rule of law.

Section 2 examines the possibility of giving the municipal council the right to delegate power in a number of specific situations, generally categorized by subject matter or by the identity of the delegate.

There are certainly circumstances where delegation to a committee might appear advisable. Delegation to senior civil servants would, in some cases, also be appropriate. However, the report concludes that specific and restricted powers to delegate would not do much to solve the problem. In Section 3 of Chapter I it is recommended that local councils be given a broad power to delegate virtually all matters to such persons or bodies as the council might choose. Councils should do this by by-law setting out the scope of the authority being delegated. Those matters that are not to be capable of delegation ought to be restricted by specific legislation.

The report turns to the protections which ought to be required when a municipal council does delegate a power and enumerates a number of protections. A council could require its delegates to:

(1) Act in accordance with policy statements adopted by the council;

(2) Act in accordance with policy statements developed and adopted by the delegates;

(3) Provide full public access to all information upon which the delegate based its decisions;

(4) Publish rules by which the delegate would be bound in making decisions;

(5) Publish or make available to the public reasons for all decisions, and attempt to make decisions on the basis of previous reasoning.

In addition to the foregoing, a council might wish to provide that some sorts of delegated decisions could be appealed to the council itself or to a committee of the council.

Not all of the protections listed above will be appropriate to every circumstance, but one or more of them will always be appropriate, and the report recommends that, in a delegation of discretionary power, the council be required to adopt at least one of the protections. A Fire Chief might, for example, be given the power to specify fire protection equipment and be required to publish the criteria he would use in determining the equipment for each building. His published criteria would indicate general standards for extinguishers, smoke detectors and the like, and could also show that higher standards would be asked for in buildings not of fireproof construction or in buildings used as rooming houses. An appeal from a ruling of the Fire Chief probably should be provided for as well, but the council might wish to make that appeal to a body containing the appointees of underwriters, tenants and rooming house proprietors, rather than to politicians. Over the course of time, really useful standards could be expected to develop.

On the other hand, a body such as the Committee of Adjustment might well be required to give written reasons and adopt rules of procedure, as is now the case, and also to be bound by its own previous decisions.

The municipal non-profit housing corporation is one special purpose agency to which, by an accident, councils are now permitted to delegate much discretionary power. Such corporations were permitted so as to allow municipalities to take advantage of favourable federal loan programs. Since the corporations derive their power from their charters, rather than from the municipal council, they are free to buy and sell land, let contracts and generally carry on the housing business. They are an example of a body where it is appropriate to require the delegate to submit detailed policy statements to the council for debate and direction.

The question of power to delegate is intimately tied up with the political structure of the municipality. It would not be helpful to give councils a power to delegate without also permitting the council to have fit recipients to whom delegation could take place. The report gives preliminary

consideration to the alternatives of the Chief Administrative Officer, the strong Mayor system, or the responsibility of creating a municipal cabinet responsible to the council.

The report then moves, in Chapter II, to a consideration of the organization of municipal corporations, and discusses the organization in terms of the system of representation and the bodies available to the council. The Chapter gives consideration to the functions of the Mayor, the Board of Control or Executive Committee, the standing committees of the council and the council itself. It does not deal in detail with the officers of the municipal staff.

The reason for that lack, in a report concerned with administration, is the authors' conviction that sound public administration is based on sound political structure. The basic models of administration that are considered are all basically political models. Two such models are considered and rejected. They are the "Strong Mayor" system, and the "City Manager" system, the latter including the Ontario approach of a City Administrative Officer.

The first system is rejected as being based on a more extreme separation of legislative and administrative powers than is appropriate to the Canadian tradition. American "strong mayors" are modeled after American presidents and governors. Their "cabinets" consist of ministers who do not face popular election and are chosen by the mayor to serve during his pleasure. However, the point is made that if mayors are to continue as the one level of political leadership anywhere in Canada that is elected at large and at enormous expense, then the extremely broad powers of the mayor of a U.S. city are probably appropriate to the expectations of the public.

The City Manager model is rejected as being an attempt to somehow take politics out of local government. It is argued that this is not possible, and the danger of trying to do it is that essentially political decisions -- allocating scarce resources among a variety of popular programs -- will either be left in the hands of a civil servant, or worse, will somehow be made by a few politicians having the ear of the city manager, far away from the normal council procedures.

The model which the report proposes is a system of responsible government as close to that found in the legislature and parliament as can be devised, given that elections will still take place at fixed intervals, and ought not to be dependent upon the whim of a government or the passage of a non-confidence motion. The basic elements in such a system will be that the mayor and executive will be chosen by and responsible to the council. The report proposes that governments could change during the term of a council, and that the appropriate non-confidence motion to remove the mayor or any member of the executive ought to be one which names the successor; has had two weeks notice of motion; and is required to be passed by a majority of all of the members of the council, not merely those present and voting.

The report goes into some detail in describing how such a system could be introduced into Metropolitan Toronto and its area municipalities, and deals as well with the political relationships between the various municipal governments. It should be clear to the electorate who is responsible for political action at each tier of the municipal system. The report concludes that it is wise to continue the practice of having the members of the Metropolitan Council sit on the area municipal councils, but it also concludes that it is unwise to have the work of Metropolitan Toronto an added or second job for most councillors. It attempts to deal with the problem of overworked controllers and mayors, and with the need for some local autonomy in matters of representation, by the following proposals:

(1) The Metropolitan Council should decide on the total size of council it desires.

(2) The Ontario Municipal Board should allocate the available seats among the area municipalities on the basis of population.

(3) The area municipal councils should decide upon the size of their councils provided that they will be restricted to a council size that is an even multiple of the Metropolitan seats in the municipality.

(4) The area municipal councils should propose both Metropolitan ward boundaries and, where the area council is to be larger than the number of Metropolitan seats, local ward boundaries, with the local boundaries to be contiguous with Metropolitan boundaries. The Municipal Board, after considering such proposals, should fix ward boundaries.

(5) Candidates for public office should choose to run for a Metropolitan seat or for a local seat. Those elected to a Metropolitan seat should sit on both the Metropolitan and local council.

(6) Each area council should select a mayor and executive committee from among its members.

(7) The Metropolitan Council should select a chairman and an executive committee from among those aldermen who were not members of any area municipality executive committee.

In Part B of the report, the authors turn to the relationship between the provincial government and the municipality, and consider the relationship under three headings. Chapter III discusses finance, Chapter IV discusses the "services" provided by the municipality (including most forms of regulatory activity as a service) and Chapter V considers the very specific regulatory service known as land-use planning.

In Chapter III, the report makes the obvious point that a very high proportion of municipal spending is now financed by provincial (and to a lesser extent federal) grants and loans, and it finds this situation unhealthy. In addition, it finds that the raising and spending of capital funds is controlled to a very significant extent by the province through its agency, the Ontario Municipal Board.

The Chapter concludes that the basic solvency of Metropolitan Toronto municipalities may have been contributed to by the Municipal Board, and that this protection should not be lost. However, the report also takes the position that the Board's present procedures are too cumbersome and that the scope of its scrutiny is more detailed than is either necessary or desirable. The report recommends that the Board should approve the gross amount of capital spending of both Metropolitan Toronto and each area municipality, and that Metropolitan Toronto should no longer be asked to pass upon the widsom or amount of area municipal capital spending, although Metropolitan Toronto should continue to issue all debentures and provide capital funds to the area municipalities.

Approval of blocks of money, without other conditions, would in the authors' view reduce the Municipal Board to doing nothing more than the market could do equally well. The report therefore recommends firm statutory prohibitions against the use of borrowed funds for current expenditures and against borrowing for capital works where the term of repayment is in excess of the estimated useful life of the works in question. In order to police those requirements, it recommends that municipal auditors report in detail on them to the Municipal Board, that the Board hear the auditors express their opinions on those matters and have access to the auditors' working documents. Further borrowing ought not to be permitted until previous statements by municipal auditors have been approved by the Board.

Moving to a consideration of the sources of funds for current purposes, the report recommends that both conditional and unconditional grants be largely replaced by direct municipal access to one or more of the more progressive and flexible tax bases enjoyed by the province, particularly the income tax. In making that recommendation, the authors acknowledge two large areas where conditional grants may continue to be appropriate. These are:

(a) Certain cases where the province wishes to encourage a particular form of activity for a trial or initial period; and

(b) Certain cases where the province wishes to guarantee to all citizens or inhabitants of the province a particular level of service, as for example, general welfare assistance.

Apart from those areas, the report recommends that grants be replaced by, for example, a specified number of percentage points of income tax collected in the municipality. A simple method for ascertaining the appropriate number of points, based on present grant revenue, is suggested.

Two refinements to that recommendation are offered. First is the suggestion that additional points of income taxation, above the initially established levels (which would come from the present provincial levy of 30.6%) could be, within limits, imposed by the municipality. Secondly, it is proposed that income or other transferred tax revenues be paid initially to the Metropolitan Council, and that the distribution of some part of those funds to the area municipalities be by a provincially determined formula.

Chapter IV, devoted to services, including regulatory services, but excluding land-use planning, concludes that municipalities are at present extremely constrained by provincial legislation. It discusses a categorization of services provided in the context of the municipality or community, where the categories consist of:

(a) services provided directly by the province;

(b) services where the province provides standards, and some organization or special purpose body other than the municipality administers the service;

(c) services where the province sets standards and the municipality administers the service;

(d) services where the municipality both sets standards and provides the service.

On the basis of that categorization, it finds that the municipality can do little within category (d), and that those things which it can do are generally of a minor or inconsequential nature. The licencing of businesses becomes virtually the only unrestricted field for municipalities. Some matters, such as certain traffic by-laws, are restrained by provincial legislation, while others such as the provision of parks, are restrained by provincial constraints on capital spending.

No such categorization can be carried too far. In mature municipalities, where the programming of existing park space is a more significant activity than the provision of new space, the provincial constraint would not be significant. However, the point that is made is that the municipality, in general terms, operates as an administrative arm of the province rather than as an autonomous government.

The report rejects the opposite approach, that of complete city-state sovereignty. It takes the position that the province has a legitimate interest in minimum standards being available to all citizens in many areas, and has a right and a

duty to intervene in certain specialized situations. However, the situation the authors believe to be desirable is one where the municipality is granted considerable latitude to make policy in a number of service delivery areas.

Perhaps the legislation giving municipalities their powers was never intended to be interpreted restrictively. The words sometimes appear to contain broad and generous grants of power. However, for many reasons, courts have interpreted the grants of power to municipalities as strictly as if municipalities were no more a government than any other administrative agencies created by the province. If it is desired, as the authors recommend, to give real areas of power to municipalities, that will have to be done through a carefully drawn statute. It will be necessary for the legislature to state that municipal governments are to be seen by the courts as exercising broad powers in particular fields of jurisdiction or classes of subjects.

Besides a review of the grant of legislative power, the report recommends that most if not all special purpose bodies be transformed into creatures of the municipality rather than continuing as agencies created either by or pursuant to provincial legislation. It may very well be that municipalities will wish to continue to provide library services and child welfare services through the special purpose bodies now in existence, but the authors believe that decision should be up to the municipality. Further, it is recommended that the creation and constitution of any such bodies should be within municipal competence.

It is acknowledged that some such special bodies may require special treatment. Boards of Education are a firm part of Ontario tradition, and with all of such Board members elected directly by the public it is harder to call them politically irresponsible. Nevertheless, their existence and their ability to determine their own budgets mean that the priorities among education, child welfare and public health, to take three popular areas of spending, must now be resolved by the Provincial government in its grant program. The authors believe that a democratic, local forum for resolving such priorities is a necessity.

Other special purpose bodies exist to resolve matters that properly touch a variety of governments. Examples are the Toronto Harbour Commissioners and the Metropolitan Toronto and Region Conservation Authority. The authors believe that the decision to create or disband such bodies should be based on negotiations between or among the governments concerned, as should the basic constituting documents of such agencies. At present a municipality has no power to enter into agreements the result of which would be to create new intergovernmental agencies.

Finally, in Chapter V, the authors deal with the field of land-use planning. There are two main topics touched upon. First is the inter-relationship between the powers of Metropolitan Toronto and the area municipalities, and recommendations are made as to appropriate methods of resolving disputes between those two levels of government. Second, consideration is given to the rights of the individual land owner in the land-use planning field, and recommendations are made whereby these rights can be protected without having to have recourse to an appointed provincial body.

Both of those topics involve the land-use planning role of the Ontario Municipal Board. Popular though the Board may have been throughout the 1960's, the authors conclude that empowering an appointed body to "approve" zoning by-laws and official plans is unhealthy, particularly when no criteria for such approval have ever been given and where the Board is prevented from developing its own criteria by judicial decisions forbidding it from relying upon its own previous decisions.

The Board attempts to make its decisions based on its own sense of fairness and upon the expert planning evidence presented to it. However, it is becoming very clear that planners not only differ on what constitutes "good" planning, but also that planners must work within a system of values that is necessarily political in nature. One local council may wish to encourage growth while another may wish to restrict it. Planners can advise on the devices available to a council to pursue those objectives, and they can advise councils of the consequences of either policy, but beyond that advice some person or body must make a value judgment. The report suggests that value judgments are the proper sphere of political decision-making. It therefore attempts to devise a system that will respect the right of the political system to make those value judgments.

In dealing with the first issue, that of inter-municipal conflict, the report recommends that Metropolitan Toronto adopt an official plan and that the Minister of Housing approve or modify the plan without reference to the Board. It recommends that, upon adoption, area municipal plans be brought into conformity, as is now the law. However, it then recommends that all of the Metropolitan powers to pass zoning by-laws and control development adjacent to Metropolitan roads be repealed. The assumption is that a power to pass an official plan gives Metropolitan Council all of the power it requires.

Even in this area, the authors recommend restrictions. It is not at present clear just how detailed an official plan ought to be. In the past some municipalities tended to simply call their zoning by-law an official plan. The report recommends that the Metropolitan plan be of a highly generalized nature. It recognizes that Metropolitan Toronto is presently attempting to prepare an official plan, and the work presently underway does tend to be general rather than specific. It concludes that unless a satisfactory definition of a Metropolitan plan can be arrived at, a definition sufficiently clear as to permit a court to rule upon whether a plan has gone beyond accepted bounds, then either the Minister or the Board must remain in a position to arbitrate between conflicting plans.

The authors' expectation is that such a system would, rather than producing court cases or ministerial arbitrations, produce agreement and compromise between the various levels of government.

Turning to the area of the protection of individual rights, the authors define those as the right not to be hurt by arbitrary or capricious decisions, nor by decisions based on a mistaken impression of the facts, as well as the procedural rights to notice and to a hearing. They conclude that all of those rights can be appropriately safeguarded without going beyond the municipal council, except for those cases where it may be necessary to go to the courts.

The procedure recommended is basically that councils pass their own by-laws, as they do now, on the advice of their staff and their committees, and that after such by-laws are passed, those affected be formally notified as they are now. It is assumed that notification and hearing will take place, as it normally does now, prior to passage of a by-law, but the document finally passed by a council can vary considerably from what was originally proposed.

Objectors to a by-law would, as is now the case, be required to notify the municipal clerk. If no objections were received, then the by-law would be automatically confirmed. Where objections were received, it is proposed that they be referred to a hearing officer appointed by the council.

The role of the hearing officer would be to consider the objections; hear evidence; permit the examination of the planners and then report to the council on whether the by-law ought, in his view, to be confirmed or modified, giving full and detailed reasons. These would once again be considered by a committee of the council and finally by the full council. In the authors' view, that procedure would provide adequate protection to the owner of land.

If a council fails to act on an application for a re-zoning or official plan change, that too should be referred to a hearing officer. It is assumed that hearing officers will be appointed by the council; be paid on a per diem basis and will in no sense be full-time members of the municipal staff.

The authors believe that, given time, a situation where local councils are seen to be ultimately responsible for planning decisions will strengthen both the quality of planning decisions and the functioning of local government.

PART A - THE NATURE OF MUNICIPAL GOVERNMENT

Introduction

Traditionally, municipal corporations in Ontario and indeed in Canada have been viewed as being primarily concerned with administration and not with policy. This housekeeping role has been reflected throughout the history of the development of local government in the province. The first act which established local government in Ontario was passed in 1793. It permitted ratepayers to elect certain local executive officers, but it gave those officers no voice in determining or regulating their duties and the only legislative function allowed to a town meeting was the right to fix the height of fences. This early legislation, although subsequently repealed, "stands out today as the foundation upon which our present system of local government has been built".[1] It was the first recognition by the central government of the necessity of some local administration. It was in the 1830's that a modicum of self-government was granted to certain municipalities such as Brockville and York, the latter becoming the City of Toronto in 1834. But in 1838, Lord Durham, examining the governmental system of the Canadas, was able to state in his famous report that the general legislature for the provinces "manages the private business of every parish".[2] The Baldwin Act of 1849, upon which our present day Municipal Act is based, was passed in this context of control by central authority.

What developed through the latter part of the nineteenth century and the earlier twentieth century has been described as "central administrative supervision"[3] of the municipalities in the province. Municipal governments, although councils were elected, continued to function as administrators for the provincial government. Indeed, this period is very interesting. The rise of Toronto as an important urban metropolis in Canada occurred during this time and yet there is no evidence to suggest any re-arrangement of the position of the City of Toronto vis-a-vis the provincial government. The traditional structure of municipal government remained virtually untouched save for the introduction, in 1897, of a board of control for the city council.

While there were no radical reforms of the municipal structure during this period, one of the striking innovations was the tremendous growth of the local board as an instrument of city administration. One of the first established in Toronto was that of the Police Commissioners in 1858. When the time came for the city to expand its municipal services, government often turned to special boards. Local boards of health, education, and library services, were established at this time. A Board of Harbour Commissioners was established in 1911. The use of the Board of Control and the many special purpose bodies were an attempt to effect "good" administration. Indeed the very name "Board of Control" was an attempt to restrict the role of municipal councils and to ensure adequate and proper administration of municipal services.

It is clear that throughout the twentieth century the responsibilities of municipalities have been broadened. The long list of items in The Municipal Act over which municipalities have jurisdiction attests to that. The ancient power, which may have first been granted to the town of Kingston, to pass by-laws for regulating the "keeping of domestic fowl or pigeons or cattle, goats, swine, horses, rabbits, mink, foxes, reptiles or other animals, or kennels for the breeding or boarding of cats and dogs, within the municipality or defined areas thereof ..." is still present in the Act.

Other important powers have been added - such as the licencing of businesses and the provision of public bus transportation services. Municipalities have also been given important areas of jurisdiction in other legislation such as The Planning Act, The Housing Development Act and The Municipality of Metropolitan Toronto Act.

Yet even with this broadening of power the strong tradition of the municipality as administrator remains. There is little in statute law, common law, or the structure of municipal institutions to encourage a policy role for municipalities. There is much to inhibit it.

This section of our report will focus on the problem of the common law doctrine of delegation and on municipal structures as impediments to a municipal policy role in Metropolitan Toronto. The second section will examine in more detail the statutory relationship between the province and the municipalities. There, statutory restrictions on the provision and financing of services, as well as restrictions on municipal planning will be discussed.

The rule against delegation does not apply to the federal or provincial governments. They are sovereign powers and thus may delegate authority. Municipalities, as the recipients of authority from the sovereign, must exercise that authority and cannot give it to others to be used. In applying this maxim to municipal councils, the courts are indeed saying that municipalities are not sovereign. They are agents of the province. To be sure, as we will see, not all authority must be exercised by municipal councils - unimportant administrative tasks can be delegated, but on the whole council alone must exercise much of the authority delegated to it. This requires council involvement in administrative matters and requires that council be an administrator.

This approach of treating council as an agent of the province would perhaps not be a serious problem if councils were administering their own programmes established as a result of the development of their own policies. The strong provincial role in service delivery, finance, and planning as discussed in our second section, ensures, however, that councils make decisions which have little policy content. The rule against delegation further inhibits the development of policy in ways that are utilized by the federal and provincial governments. Municipal councils cannot delegate authority to an executive which would

be responsible for its exercise, nor can they utilize other bodies to assist in the development of policy except in a purely advisory capacity.

The structure of the municipal corporation is thus part of the tradition of the municipality as housekeeper. The members of the executive, when it is in the form of a Board of Control, are not in reality responsible to the same electorate as the members of the council, and are not responsible to the council. Internal divisions are fostered which inhibit policy formation. Neither the Mayor, the Board of Control, nor the Executive Committee receives or is responsible for the exercise of delegated authority. Moreover, many important matters, such as police and child welfare, are under the authority of special purpose bodies.

In short, this section of our report deals with the governmental nature of municipalities and finds it wanting. If a policy role is to be encouraged for municipalities in Metropolitan Toronto then we suggest steps which would enable them to function as the senior levels of government do where policy development is not curtailed. A major step towards this is the granting of a general power to delegate to the municipalities of Metropolitan Toronto.

We suggest, in addition, procedures to ensure the responsible exercise of that delegated authority. The election of the Mayor and executive by council, as well as provision for council to recall those officers, would provide a strong check in the exercise of delegated authority. With respect to the delegation of legislative or policy-making authority, we suggest provisions for appeals, right to hearings, public access to information and policy statements to ensure the responsible exercise of that authority.

It is through these kinds of mechanisms that we suggest the work of council can be made more effective and efficient. The granting of a limited power to delegate is a possible alternative to this approach of general delegation but such a limited power will not be as successful in moving councils from the role of administrator to policy maker. Nor will it provide adequate safeguards for the responsible exercise of power. We are suggesting that municipal councils should have the same governmental qualities as the federal and provincial levels of governments. By providing councils with the authority to delegate power, subject to procedural safeguards, and by providing them with the authority to make their executives responsible to them, councils can decide themselves on the role of their committees, their executive bodies, and their civil servants, and will be able to choose the most appropriate methods to develop policies and resolve issues.

CHAPTER I - THE POWER TO DELEGATE

Section 1 - The Present State of the Law

The Nature and Effect of the Rule Against Delegation

"Delegatus non potest delegare" is the latin maxim which the courts so often use to prevent bodies created by Parliament or the Legislature from delegating their authority to another body. Municipalities in general and in particular the Municipality of Metropolitan Toronto and its constituent municipalities fall within the ambit of this rule. The purpose of this section is to explain the nature of the rule, the extent to which it may, in law, affect municipal decision-making, and the reason for its existence.

The maxim is not an immutable law but rather has been used by the courts as a device for interpreting statutes which grant authority to bodies, organizations, or individuals.[1] The courts, therefore, in general examine a section of an act which gives authority to a body to ascertain if, from a reading of the section and the statute as a whole, it can be said that the authority can only be exercised by the body to which it was originally given or "delegated". In most cases, it can be said that unless there is specific provision to the contrary, the authority can only be exercised by the body to which it was originally granted.

Having generally described the maxim and its application, it must be said, however, as with every good rule, there are exceptions. It is clear from the case law as it has developed, that some authority may be sub-delegated by a body to which it is granted even though there is no provision found in the statute. The courts have said that authority which may be so delegated without legislative authorization is "administrative authority".[2] This report need not concern itself with the finer legal points on what is administrative authority and what is not. Suffice it to say that where the authority granted by municipalities involves tasks or decisions which do not adjudicate or determine rights, and where the task or decision does not involve the exercise of a great deal of discretion, "policy" or legislative action on the part of the body receiving the authority, then the delegation has generally been held to be valid.[3] However, the lines are not at all clear. The result of the courts' interpretation of the nature of authority being delegated, and thus when authority may be sub-delegated, are confusing.

The first area of confusion is found in trying to ascertain whether a municipality is acting in an adjudicative or quasi-judicial capacity. This matter must be decided by the courts when the statute is not clear or as is very common when it is silent. Where a municipality is acting in such a capacity and where there is no specific power to delegate, then the authority cannot be delegated. The basic reasoning is clear: once the decision that the function is "adjudicative" has been made, an individual should be able to expect his rights to be ruled upon by the particular body which has been authorized to do so.

Moreover, the courts will often impose an obligation upon the municipality to hold a hearing. That hearing function, as well, cannot be delegated. The passing of a by-law (as well as being a legislative action, and therefore not capable of being delegated) can also be viewed as a quasi-judicial action, where the by-law affects the lands of only one individual.[4] As a quasi-judicial action it may therefore require a hearing, the holding of which cannot be delegated by council. The granting or refusing of a demolition permit is an example of a quasi-judicial function and that is why neither the decision to grant or refuse the permit nor the hearing respecting it can be delegated. It should be noted that The Planning Act is silent regarding a hearing for demolition permits and that the issue has never been tested in the courts. In contrast the Ontario Court of Appeal in the case of Re Zadrevec and Town of Brampton [1973] 3 O.R. 498 (C.A.) stated that because of the statutory scheme of The Planning Act in Ontario, the Ontario Municipal Board is the only body which must hold a hearing with respect to rezonings. Municipalities, therefore, are relieved of that obligation.

In some situations the problem does not arise. For example The Municipal Act, section 446(1)(b) provides that before a municipality passes a by-law for "stopping up, altering, widening, diverting, selling or leasing a highway ... the council or a committee of council shall hear ... any person who claims his land will be prejudicially affected by the by-law ...". In this situation the statute specifies the right to a hearing and the forum for the hearing.

In short, although it may be generally stated that municipalities, whenever they are making decisions which affect the rights of particular persons as opposed to the rights of many or all inhabitants, or where they are making a decision which may determine the rights of a small group of persons as between themselves, cannot delegate the authority to make such decisions, an exact determination of when a decision is quasi-judicial is nevertheless very difficult, as is a determination of the effect of the statute on the obligation to hold a hearing.

The dividing line between what is an administrative decision and thus may be delegated, and what is a policy or legislative decision which cannot be delegated is even more unclear, to say the least. Two cases which are relatively recent may serve as illustrations. In one, Regina v. Sandler,[5] the Court said that a by-law passed by the City of Toronto purporting to enable the fire chief to inspect fire protection equipment in any premises and to make such orders for the installation, repair or replacement of fire protection equipment as he deemed necessary was invalid because only the municipality was authorized, under The Municipal Act, to make regulations for the prevention of fires. The Court stated that the legislature could not have intended that the municipality could evade its responsibilities for making regulations by substituting for its own judgment that of a non-elected official in its fire department. The case of Regina v. Campbell[6] offers a nice contrast to the Sandler case for in the Campbell case the municipality (again the City of Toronto) by by-law provided that no one could hold or take part in any public meeting or similar gathering in a park without

approval of the time and place being given in advance by the Commissioner of Parks. The issue again was whether the City was granting its authority to regulate parks under The Public Parks Act to the Commissioner. The Court said it was not, as the authority granted to him was merely administrative. It continued that it would be an undue burden for the council to specify all the situations and regulations respecting the use of parks for meetings, so it was appropriate for the Commissioner to do so.

One must wonder why councils must specify regulations for fire equipment but not the use of parks. Both cases involved the conflicting interest of the rule against delegation on the one hand as opposed to facilitating reasonable administration on the other. If the Fire Chief actually had a set of regulations he could presumably have recommended them to the City Council very easily. The problem probably was that the Fire Chief did not have precise regulations. We can imagine what such regulations would provide: numbers of fire extinguishers per floor based on gross floor area, exact situations where stand pipes, sprinkler systems and so forth might be needed, different sets of regulations depending on the number of staircases, the degree of fireproof construction, and so forth. Such regulations would be beneficial in permitting the owners of buildings to know just what they had to provide. On the other hand, the regulations might well be unduly restrictive when all factors were considered that related to one building and might provide inadequate protection in others. There was a need for flexibility. The Sandler decision can be seen as a victory for civil liberties but as a loss for controlled building costs and, possibly, for fire safety.

The Campbell case involved a person who wished to use the parks for poetry reading and speeches, but refused to apply for a permit to do so. It appears to be reasonable to give the Commissioner of Parks some discretion in permitting activities in parks. Meetings may need to be scheduled, and the whole process probably cannot be precisely regulated by council. Mr. Campbell's difficulty was that he believed that he had a right to speak without a permit but once the court found an administrative discretion being granted, it examined the matter no further. The result was a total victory for bureaucracy. The decisions, however, are important in indicating the kind of dilemma which municipalities face in trying to ascertain when authority may or may not be delegated. The Municipal Act which governs the area municipalities provides little help, for in most situations it states simply that "by-laws may be passed by the councils ..."[7] and that council's powers "shall be exercised by by-law."[8] Similarly, The Municipality of Metropolitan Toronto Act provides that, unless otherwise specified, the powers of that corporation must be exercised by council and by by-law. There are other provisions in both of these acts which do allow for some delegation to occur. This will be discussed later, but at this point it is important to note that generally there is a presumption against the delegation of municipal authority; that it may, however, be allowed in some limited situations, but that the dividing line between when it may be allowed and when it may be struck down is obscure. In view of this underlying legal situation it is not surprising that municipal solicitors are wary in suggesting the delegation of authority.

These problems are not restricted only to the delegation of authority to municipal officers or employees. The early case of Simon v. Gastonguay[10] struck down an attempted delegation by the Halifax City Council to its Committee on Works. Non-administrative decisions therefore cannot be made by committees of council. Similarly the case of Re Davies and Village of Forest Hill[11] clearly indicates that authority cannot be granted by council to groups within the municipality. In the Davies case the council, by by-law, spelled out regulations governing the construction of swimming pools on residential properties, and further, provided that before an individual could construct a pool he must have the consent in writing of all registered property owners within one hundred feet of the pool. The court stated that the by-law was invalid as it enabled the property owners and not council to decide when a pool might be constructed.

Municipal councils in Metropolitan Toronto, like all municipal councils, are prevented from delegating their legislative or adjudicative authority to any other body within or without the municipal structure. As such they are, of course, treated completely differently by the courts from the federal and provincial governments. Those two governments are sovereign. They clearly have authority to delegate to anyone or anything, because of their status under the British North America Act;[12] indeed, it was by virtue of that authority that municipalities were established and authority granted to them by the province.

The problem of delegation raises another interesting issue at the municipal level. It is clear from the preceding discussion that municipalities are in an inferior position as receivers of delegated authority. They cannot give that authority away without legislative permission or without the imposition of restrictions upon it. As a result most authority sub-delegated by them is so severely limited that it is merely the exercise of administrative authority without the exercise of discretion. But the status of being an inferior government affects not only this ability to enable other persons or bodies to accomplish a number of tasks on behalf of the municipal councils but it also affects the ability of the municipality to exercise its own authority even when it is not delegated. This can be seen by the way in which the courts interpret authority granted to municipalities under The Municipal Act to regulate certain matters. That authority has been limited so as to enable municipalities to regulate but not prohibit conduct. For example, a City of Toronto by-law was struck down as being prohibitory and not regulatory in that by preventing hawkers and peddlers from selling on certain main streets the municipality was in fact prohibiting them from carrying on their business and not merely regulating them.[13] The court felt that the power to regulate did not include the power to prohibit.

The power to "regulate" matters appears generally to be a very limited one. It does not include the power to deal with each case on the merits as it arises, nor the power to vary decisions from time to time as circumstances change. A parent may think that he is "regulating" his child's behaviour when he tells the child what to do from time to time, but that is not what the courts mean by regulate. Really, the parent is exercising sovereignty when he behaves that way. "Regulating" is making firm

rules about bed-time, how often baths will be had, etcetera. What the courts require is that all children be dealt with by uniform rules drawn up in advance to cover all possible circumstances, regardless of particular needs.

The courts will not allow municipalities, in many situations, to pass by-laws which may transform their authority to regulate and make standards by legislation into a discretionary power. For example, the City of Toronto is empowered to regulate trades but when it did so by a by-law which, among other things, required a permit to be issued by City Council before a certain trade could be established, the court struck down the by-law on the grounds that the legislature did not intend that the municipal council deal with each case individually, but rather that the municipal legislation be formulated so that each person would be treated in a like manner.[14] The regulations therefore had to be detailed in the by-law, to be effective. Any parent who has tried to approach the activity of bringing up children entirely by making rules in advance will appreciate the difficulty municipalities face, particularly when a new situation (whether it be developers block-busting or frisbee playing in the living room) occurs.

Although this insistence on general rules does not seem to be followed by the courts with respect to zoning matters it clearly applies to other areas of municipal enactment.[15] Municipal councils therefore cannot develop policies incrementally but rather are under pressure to spell out all the details of a policy even if the councils wish to make decisions on individual matters on their own and not to delegate them. Once again this is different from the senior levels of government where legislation may set standards as broad and simple as "the public interest" and allow policy to be developed.[16]

Not only may the two sovereign governments delegate any powers they may wish, they are often in the habit of delegating far more discretion to some of their appointed agencies than they delegate to municipal governments. In practice, policy is often developed incrementally by the senior levels. An early air pollution control statute will rely extensively upon ministerial discretion. As time passes and experience is developed, more and more precise regulations as to standards will be enacted.

Some examples of broad delegated powers can be seen in the National Housing Act (R.S.C. 1970, c. N-10), where authority is delegated to the Central Mortgage and Housing Corporation to enter into agreements with provinces and municipalities with respect to urban renewal schemes which are inter alia "acceptable to the Corporation" (s. 24[1]). We know of no case where the issue has been raised as to whether CMHC's Board of Directors must hold a hearing before deciding whether or not to enter into an agreement, or whether regulations setting forth the basis for "acceptability" ought to have been published. The Corporation is given other broad powers to develop national housing policy by its everyday decisions in that under s. 40(1)

it may acquire, construct and improve housing. There is no real policy definition found in the legislation. Policy is determined by the use of decision making authority by CMHC which under the Central Mortgage and Housing Corporation Act (R.S.C. 1970, c. C-16) may exercise all of the authority of the Minister of Housing.

Other examples can be suggested, such as the broad authority of the Canadian Radio-Television Commission to formulate policy and make regulations under the Broadcasting Act, (R.S.C. 1970, c. B-11). A provincial example, albeit under question for other reasons in another province is the censor board which, under The Theatres Act, (R.S.O. 1970 c. 459 s. 3(2) is given authority simply to censor films. It is clear that the authority of these organizations to make policy is indeed broad, with little legislative direction. Moreover, such authority can impinge on the interests of individuals in a very direct way and thus should be subject to much closer scrutiny and limitation. Recent legislative enactments, and the creation of a number of appellate bodies have introduced into the system broad powers to scrutinize decision making. The difficulty is that if limitations are not placed on discretion, no amount of scrutiny will help. We will discuss possible limitations later. Nevertheless, it should be noted that although the provincial and federal legislatures do not often deal with legislation concerning individual matters but, rather delegate that authority to inferior bodies, that authority is broad enough to allow the incremental development of policy.

The legal status of municipalities thus has important ramifications from the point of view of their policy and decision-making role. Because of that status they are obligated to deal by detailed regulations of general application, both with matters which they are endeavouring to regulate themselves as well as with any matters which they wish to delegate. Councils are not endowed with the luxury of making generalized policy to be developed in detail on a case by case basis; they are not endowed with the luxury of enabling others - either employees, committees, or independent agents-to assume real responsibility for detailed policy formulation, nor are they endowed with the capacity to enable others to hold adjudicative hearings and report to them with respect to decisions to be made. If anyone wonders why municipalities move slowly and underneath a moving cloud of paper, the reasons are found in the legislative and judicial constellations presiding over their existence.

Thus far we have examined the legal limitations on council's role as policy maker. We have suggested that municipal councils are inhibited because much of the details of policy must come before council and be dealt with by council. In practical terms this means that the kind of fire equipment in every different kind of building must be dealt with by council and that, indeed every "no parking" sign, every parking meter, and indeed virtually every promotion and dismissal must be dealt with in a similar manner. None of this seems to have been done intentionally to overburden municipal councils. It seems moreover that there is a cognizance of the need to delegate some authority and thus the courts' exception for "administrative"

authority as seen in the ability of the parks commissioner to regulate meetings in the parks. Moreover, clearly the courts are concerned about a wider and perhaps more important issue which may be described as the "rule of law".

The Purpose of the Rule

The approach of the court both with respect to the sub-delegation of authority and the ability of municipal councils themselves to exercise power on a case by case basis shows this concern for the "rule of law". The concern with respect to the exercise of authority by persons other than the municipal council is a concern that only those authorized by law to exercise the power granted, do so. It is their responsibility. This might be taken further, particularly in the case of municipalities; since it is the municipal council which was elected and represents the interests of the electorate, it must be the council which exercises authority. The "rule of law" demands, in short, that power be exercised only by those authorized to do so; the responsibility must be clear and open. Such an argument is also clearly applicable to matters of adjudication and the holding of hearings where both individual rights and matters of municipal policy are involved. The council was elected to establish the policy, and since its decision is the one to ultimately prevail, those affected by it should be entitled to be heard by the council. The "rule of law" thus also involves an aspect of due process. The right to be heard by the body making the decision is of course part of due process. Similarly, the requirement that council legislate by regulatory standards is part of the due process concern. The "rule of law" demands that no arbitrary decision be made either by council or by administrators acting on council's behalf. The great value in the "rule of law" is that all men are treated equally under the law and that discrimination is prevented. The court's approach with respect to the exercise of powers by council itself and the requiring of standards and specificity to control the administrative decisions of sub-delegates of council clearly involves such values.

These policies, which lie behind the courts' decisions with respect to municipal government decision-making, are not only valid but fundamental to any system of government. Yet there are other values and concerns as well. Clearly there is a concern that government function efficiently and that one body need not make all decisions. Indeed, it is suggested that this is the reason for the courts allowing some delegation of authority. But there are other concerns that run counter to the strict application of the "rule of law" as well. Perhaps most important is that some flexibility and discretion is required at all levels of government and administration. Stories of welfare bureaucrats abound. Those "terrible bureaucrats" who respond to a poor widow's plight by stating that "a rule is a rule" are clearly abiding by the "rule of law". Similarly, a municipality which refuses all demolition permits on the basis of a rule or policy that none should be allowed is clearly acting upon the "rule of law". In neither case would most agree that the results

of such a dedication to the "rule of law" provide a satisfactory public response to the needs of the people.

This of course does not lead one to conclude that no rules should bind any administrator nor that municipalities should never be required to establish general regulatory schemes. It seems clear that what is required is a judicious mix of both discretion and restriction on that discretion by established standards or policies. A wise parent makes rules, sometimes permits exceptions, and deals with new situations as they arise. Different situations may require a different mix of discretion and rules. Moreover, it would be sensible to see discretion as a continuum between general or vague policies providing few restrictions on the ability to exercise authority at one end and situations where discretion is more and more limited by detailed policies at the other. Throughout the continuum there is discretion and that discretion is exercised. The issue is whether the municipal council must always exercise most of it with ability to delegate very little of it. The rule against delegation at the municipal level is an attempt to maintain discretion at the council level. The result is that a great deal of administration must also be conducted by the council since discretion pervades the system.

Alternative Approaches

The present law not only encourages the situation where council agendas are inundated with matters that contain little by way of important discretion, but also requires councils to establish standards and rules in advance of real experience on very many issues. Moreover, the present law leaves it to the courts to decide what may or may not be delegated after the fact. Municipal councils and their solicitors are, therefore, required to second-guess the courts. The difficulty with such a situation is not only the confusing legal doctrine on which the courts rely; but also, and more important, the fact that governments, including municipal governments, often cannot anticipate and answer even all major questions of policy in advance.

It would seem clear that even with expert advice municipal councils are not omniscient and may need to allow a detailed policy to develop over time. They do not seem to be the appropriate body at all for the development of the small details of policy which amount to administration. Moreover, it can be argued that some policy is better developed when applied to individual factual situations and that again the requirement of developing standards may not be appropriate and may indeed inhibit municipal action.

It would seem fair to say that legislative bodies are not the best arenas for the hearing and adjudication of disputes or rights. The requirement of municipal council decisions on such matters may encourage discrimination and arbitrariness as individual votes may be cast for many different reasons. It would seem clear, therefore, that there are strong arguments to

be made for the alteration of the rule against delegation at the municipal level in Metropolitan Toronto. Variations of the rule could not only enable municipalities to delegate many matters which are now maintained at the council level and thus enable councils to have more time for general policy considerations, but also such an approach could enable municipalities to develop policies as other levels of governments do, through committees, through other agencies and through the results of the adjudication of disputes and the determination of individual rights.

We acknowledge that the simple removal of the restriction against delegation will not solve all problems; as will be seen below the municipalities are still the administrators of provincial programmes and their councils may therefore continue to act as administrators unless that relationship is changed. In any event there must continue to be a concern with respect to responsibility for the exercise of municipal powers. There must always be a consideration of the discretionary exercise of delegated authority. We will now turn, therefore, to an examination of possible methods of lessening the severity of the delegation rule while still maintaining a serious emphasis on the "rule of law". One possible method is to determine in advance areas where the exercise of discretion is not particularly important and to provide by statute for the delegation of such areas to certain bodies. The other is to provide the municipalities with broad statutory authority to delegate while building in safeguards for the "rule of law".

Section 2 - Specific Areas of Delegation

As we have outlined, the power to delegate is one of the incidents of the power to govern. While we intend to recommend that a broad and general power be granted, and that it be coupled with a series of safeguards designed to prevent abuses of power by authorities subordinate to the council, that is not the only possible solution to the problem of trivia coming before the council. Indeed, if the trivia problem were the only problem the solution could be found in granting very specific powers to delegate designed to cover particular areas. One of the purposes of this section is to explore specific areas in which delegation would appear appropriate.

Before doing so we must sound a note of caution. It would be easy to list the number of items coming before the council for decision; categorize them, and conclude that a large amount of council time was being occupied with trivia. That is not the case. Whatever difficulties municipal councils may have with coming to grips with policy matters, they have refined the processing of trivia into a highly efficient system. The major disadvantages are in time spent by council members reading the material prior to council meetings and in the inefficient use of senior staff time spent watching the council process an item. It will be useful to describe the methods used by councils in Metropolitan Toronto to process material.

Most of the material presented to a council is in the form of a recommendation by the municipal staff for a change of some sort. The "changes" can be the promotion of a labourer to foreman, the removal of a parking meter or the passage of a by-law to permit the construction of a huge office building, but all follow much the same route.

In general, the operating departments of a municipality report first to a standing committee of the council. What this means is that when a commissioner of traffic or of public works wishes to see a change in traffic regulations, he writes a report addressed to the appropriate standing committee describing the situation, explaining the reasons for change and recommending the change. He then sends that recommendation to the secretary of the public works committee, generally with in excess of 100 copies.

The committee secretary takes all of the items he has received by some date five or six days in advance of a scheduled meeting, lists them into an agenda, makes bundles of copies of each item and distributes them to the members of the committee, to various civil servants and to the press. A typical City of Toronto public works committee meeting may have as many as seventy-five items relating to traffic regulations alone.

When the committee meeting begins, the chairman calls the items in order from the agenda, and the great bulk of them are agreed to by the committee without debate. In Toronto there is an alderman for each ward on each committee, and the committees tend to give considerable deference to the views of the alderman of the ward. Indeed, agendas are organized by ward, so that a committee member can generally avoid reading much of the agenda

by restricting himself to the items relating to the ward he represents. Metropolitan Toronto agendas are not organized in that fashion since the composition of committees is not so rigidly geographic, but the agendas there tend to be shorter, and committee members still tend to pay particular attention to items relating to their municipality.

Returning to City of Toronto traffic matters, we said that most items are approved without debate. It is perhaps more accurate to say that most are disposed of without debate. Aldermen generally know the streets in the wards they represent, and they may know a good deal about the reasons for the recommendations coming forward from staff. The alderman himself may have asked the staff to look into the problem. He may be aware that one or more of his constituents has asked for the change. If he knows the proposed change to be a popular one, or if it is an uncontroversial matter which he is personally prepared to accept, then he is likely to move that the commissioner's recommendation be adopted, and that motion is likely to carry.

If that situation does not obtain, then the alderman may do a number of things. He may move that the item be deferred for a few weeks, to permit him to have a look at the situation, discuss it with the staff or discuss it with adjoining ratepayers. He may move that the staff report more fully on some aspect of the matter. He may move that the secretary of the committee conduct a poll of residents, to ascertain their views. He may simply ask that the item stand down on the agenda for an hour or so while he does some informal checking. All of those motions tend to carry with little or no debate.

Generally, the committee will not support an unlimited deferral or a motion to not approve the staff report, at least not the first time the item appears. There is a sense that staff recommendations ought to be treated seriously, and ought not to be rejected without good reason.

Assuming that there has been a deferral, the original report and any further reports asked for appear on another agenda, and the process is repeated. If the matter is a controversial one in the neighbourhood, residents may appear as a deputation and state their views. There is no law requiring this to happen, or indeed requiring that committee meetings be open to the public, but in Metropolitan Toronto, open meetings and public deputations are the inevitable practice. At the hearing the staff person who originated the recommendation will very probably be asked questions about the matter, or will be invited to comment generally. Finally the committee votes, and while the alderman of the ward is, at this stage, heard with respect, it is not nearly so certain that his views will carry the day.

Following the meeting, the committee secretary prepares a report from the committee. The report includes all of the staff reports on each item about which the committee is making its recommendation, any other written submissions on the item received by the committee, and the committee's recommendation to the council. That report is placed on the agenda of the next meeting

of the executive committee, generally a week after the standing committee meeting.

When Toronto had a Board of Control the practice was for the Board to at least notionally "consider" each item in the standing committee reports. What actually happened was that citizens who were unhappy with a committee decision would appear before the Board of Control and argue the matter again.

That system may have had relevance when there was a Board of Control elected at large from the City as a whole. When the executive committee system was introduced, the first executive committee agreed informally not to debate committee reports, and to send them on to council unaltered. There have been some exceptions to that procedure, but that is generally what happens today. However, the committee reports do reach the council as a part of a report from the executive committee.

The one major exception to the rule of no debate at executive committee occurs when the result of a standing committee recommendation would be the expenditure of funds that have not been provided for in the estimates. Then the executive committee is asked to provide funds. Generally on small matters, and in the early part of a year, the executive committee is able to advise the council that funds can be drawn from the "contingency" account.

When the standing committee report reaches the council, generally a week after the executive committee has dealt with it, most of the items have become quite uncontroversial and are adopted without debate. Half of the council, in the case of the City and many of the boroughs, have already followed the item through a standing committee, and do not bother reading the material again. If any member of the council has serious reservations about an item he intends to move that it be referred back to the committee. If he advances good reasons, the council generally supports the referral, and the item takes another month to get back to the council.

We have described this process in some detail because we believe that it tends to somewhat minimize the problem of the "tyranny of the agenda" which has been made much of from time to time. The responsibility for initiating recommendations for change lies in most cases with the department head. Aldermen tend to initiate change by asking the department head to report on a particular problem, either by an informal request or, if faced by a reluctant department head, then by a motion carried by a standing committee or even by the council. If the matter is minor and non-controversial, then the alderman of the ward has something close to a veto power. As the matter becomes more major, then more and more council members tend to be drawn into the discussion, and a full scale council debate may well be precipitated by it.

From a functional point of view, that does not appear to be such a very bad system. What has really happened is that traffic matters have been delegated to a department head, who must

either get the agreement of one alderman to them or else see them carried after a full debate. The more significant the matter is, at least in the view of the members of council, the more likely it is to receive wide debate.

The disadvantages of the system are more difficult to describe. A very major disadvantage is that members of the council become so used to processing trivial matters and so adept at it, that they tend to develop little capacity for dealing with major issues. An issue such as whether on-street permit parking should be permitted will tend to be decided on the basis of the exact administrative techniques proposed to be used for issuing the permits. The council has little capacity to make the policy decision to have or not to have permit parking and if it decides to have such parking, commit itself to review the administrative techniques later. Those who opposed the policy will equally oppose the details.

Secondly, the staff tends to recognize that the council likes to discuss trivial matters, and therefore refers everything to the council. A high proportion of senior staff time is spent attending the meetings of standing committees and council, often merely to cover the possibility that some question may be asked. The strongest impression of a spectator at a council meeting is of a chairman calling out numbers while everyone says "agreed". Even when a subject is debated, it is hard to follow the debate without having read all of the material that is before the council. The amount of paper is so extraordinary that it is impossible to pick it up at the meeting and follow what is going on.

The advantages of permitting delegation of certain routine matters ought, therefore, not to be unduly stressed. The flow of paper would be reduced, The staff would have a little more time, but not much, because the time consuming, controversial items would still occupy most of the time. Members of the public stopping in on a council meeting would not face so much irrelevant paper. Not much else would change.

There are some present advantages to the municipal system over that found at other levels of government which we would not wish to see lost. For example, the Minister of Highways for the province can make traffic regulations, and when he does so, all that is available to the public is the bold regulation prohibiting turns or whatever. Municipal government is carried on in public, and one of the documents available to the public is a report from a staff member saying why it is that a particular regulation should be changed. If a member of the public is aggrieved he can see those reasons, and if the reasons do not seem to support the action recommended, he can generally persuade someone to re-open the matter. The same is true for virtually all forms of action taken by the municipality. If the rates to be charged for day care are to be increased, the council will have received a report explaining that action.

Contrast this openness with the orders-in-council fixing the amounts payable for family benefits recipients, or the action of the Ontario Housing Corporation in fixing a rent scale. The cabinet and the OHC directors will have received reports justifying the scales, but those documents are generally unavailable to the public.

Parliament and the Legislature spend much of their time debating bills, and the courts have held that the debate is meaningless in interpreting what the meaning of the bill is. All Parliament receives is the bill, and speeches about it are made for a variety of reasons. Municipal councils generally spend no time at all debating bills. The councils debate reports which set forth the reasons for action, and there seems to be general agreement that if the reasons do not justify the conclusions then action should not be taken. When the reports are adopted, bills to give effect are introduced and they are normally carried in the space of a few minutes at the end of the meeting.

If one wished to reduce the flow of paper to the council, one could do so in a number of areas. Significant areas would be as follows:

Traffic Regulations

Here authority could be granted for such regulations to be made either by an official of the council or a committee of council rather than through by-law, as at present. Since most councils would wish any such regulations to at least be reviewed by a committee, and to be properly reviewable by the council on a motion made in the council, a committee power would seem most appropriate.

Contracts

It would be appropriate to permit an official of the council to award contracts where tenders had been called, where the award was to the low bidder, where the tender was formal in every respect, and where the bid was within the amount budgeted. The integrity of the public tendering system would seem to be protected so long as it was required that all tenders be opened in public and that a report on all tenders received be filed with the clerk at the time an award was made.

Lottery Licences

The power to issue such licences could be granted to an official in each case where the present formal requirements, including the present requirement that the Chief of Police had no objections, were met. The power to refuse to grant a licence might best be left with the council.

Home Repairs Loans

The power to fix the terms of a loan under various federal, provincial and local plans might well be delegated to a committee. Over twenty loan approvals are authorized by a typical council meeting.

Termite Control

The power to make grants for soil sterilization and repairs necessary because of termite infestation might be delegated to a committee or even to an official.

Staff

The power to grant promotions and to terminate staff in the lower echelons of the civic service might be given to department heads, perhaps with the requirement of a favourable report from some other official such as the head of the personnel department. The middle management level, and senior terminations, might best be left with Board of Control or executive committee, so that only very senior appointments would go to the council.

A number of other detailed matters are referred to the council as much as a matter of habit as of legal necessity. If municipal councils really wished to delegate more authority, a number of the items mentioned below could now be delegated.

Temporary Street Closings

These are presently authorized to accommodate various community activities such as street dances. There is no real authority for the closures, and they are always approved subject to conditions that permit access to the street. What actually happens is that movable barriers are set up and the normal flow of traffic is cut off, generally for no longer than a few hours. Since the council has really no authority to grant the approval that it does, it could equally well authorize an official to do it.

Legal Actions

The City Solicitor asks the authority of council to commence actions about all manner of claims, many of which relate to motor vehicle accidents or the collection of arrears of business taxes. If council had the power to delegate these matters, many of them could best be dealt with by the City Treasurer or, where one exists, the Chief Administrative Officer.

Street Allowance Works

> Applications to plant trees, install fences, erect lighting standards and things of that sort are frequently brought before the council. The terms upon which permission will be granted have been largely standardized, and permission is invariably granted except in those cases where a member of the staff reports on there being some form of hazard. Authority to grant permission could well be delegated.

Attending at Conferences

> While the matter of council members attending conferences continues to be an issue of some delicacy, funds for various staff attendances are provided in the annual estimates. When that has been done, there seems little merit in bringing, for example, recommendations that particular fire fighters attend courses at the Ontario Fire College in Gravenhurst before the council.

Besides the possibility of limiting the subject matter of delegation by the council, there remains the possibility of limiting the persons or bodies to whom council might delegate certain authority. The various persons to whom delegation might take place are the heads of civic departments or committees of the council.

In the next section of this report, we advocate a power that is unfettered by reference to the persons to whom authority may be delegated, and it is our belief that the power to delegate will be more usually employed when it is delegated to bodies beyond the civil service staff. The effect of such a power will be, clearly, to permit the council to create special purpose bodies. We believe that such bodies will continue to be created, and that it is important that the circumstances of their creation, their powers, and the precise form of review of their work available to the council should all be open to review by the council itself.

Examples of presently existing boards are agencies such as the library board, the local board of health, and the planning board. Other agencies, such as the Committee of Adjustment, are appointed by councils to act primarily as adjudicative bodies. Still others, such as arena boards of management, are appointed primarily to permit very local concerns to have an impact on the programming of a particular facility. In every case the specific powers of the board or committee are laid down in a provincial statute without which it would not be possible for the agency to be created. Indeed, rather than "delegating" authority to such agencies, it often appears that the agency itself has become largely self-perpetuating, relying on the council for only occasional votes of confidence in the form of the renewal of appointments and the approval of budgets.

What we propose in the chapter on municipal services is a very different arrangement. We see the council as accepting the ultimate responsibility for providing all of the services of the municipality, but having the right to do so through boards responsible to the council to the extent and for the periods that the council chooses, and subject to the policy statements and terms of reference which the council chooses to adopt.

There has been discussion, for example in The Report of the Special Program Review Committee,[1] on the need for increased information services, and that report suggests that the public library system would be the best way to provide such services. That report has been viewed with some alarm by those agencies which presently provide a broad range of social service and counselling information, using social workers rather than librarians to provide the service. We do not wish to take sides on the merits of the issue, but we suggest that a municipal council might well wish to see both of the services provided for under the auspices of the same board.

If that were the wish of the council, it would probably find both the present library board and the present private non-profit corporation less than satisfactory vehicles. It would wish to broaden the terms of reference of the library board, deal with the integration of personnel and set policy guidelines for the new board to follow. The municipality is precisely the agency that ought to be able to do that work. References to the various ministries that fund the two services or, worse yet, the private bills committee of the legislature, would not likely be helpful. Yet for that sort of decision to be made, the municipality would need to be unrestricted in those persons to whom it could delegate certain of its powers.

One may ask why the councils do not simply set up whatever bodies they wish as "advisory" to council. That involves no delegation of authority, and might appear to solve much of the problem.

The answer is that councils have been doing exactly that, and have been experiencing increasing problems. It is important for the council to obtain persons of ability to sit on special purpose bodies. Most potential appointees want to know whether the proposed position is serious or merely cosmetic, whether the advice given has some chance of being acted upon, or not. Picture a library board, denuded of staff, buildings, books and funds, but told that council would welcome its advice. Most board members would resign immediately, and properly so. A body works best, as we have observed in another context, when it must both advise on policy and bear the responsibility of implementing its own advice when that advice is accepted.

In conclusion, we advise against limiting council's power to delegate to employees of the council or committees of the council. We believe that if permitted to create other agencies, and give power to them, it will use the power wisely. It may be said that under those terms, a council could delegate much of its power to persons unfit to exercise it, and that is true. So could the Legislature. So could Parliament. The fact that those bodies have not generally chosen to do so is the proof that elected governments are jealous of their right to exercise power themselves. They tend to delegate responsibility to subordinate bodies only when they can see no other effective way to do their job. That is what we would expect municipal governments to do.

Section 3 - A General Power to Delegate

Introduction

The alternative of providing municipalities within Metropolitan Toronto with wide powers to delegate such of their powers to whom they wish will now be examined. This alternative is very attractive in its simplicity and its basic assumption that the municipalities forming the Metropolitan federation are mature and responsible enough to handle their own problems. It, however, also poses serious questions with respect to political responsiveness and responsibility, and, moreover, involves serious problems with respect to the "rule of law" discussed earlier.

The attractiveness of this option will be discussed first and its problems second.

Benefits

It is obvious that a provision in The Municipality of Metropolitan Toronto Act to enable any of the municipalities to delegate any of their powers is a very simple solution to a major part of the problem of delegation.

The other part of the solution is a granting of more general powers to the municipality. Legislation will have to deal with both the municipality's power to delegate and with the description of the powers originally granted to the municipality.

A general power to delegate could be drafted clearly enough to circumvent difficulties respecting the kind of authority to be delegated, (administrative or legislative) and similarly the problem of to whom the power could be delegated, be it council committee, municipal officer, employee, or citizen group. Such a provision would be in keeping with the province's general policy respecting municipalities, which is to strengthen and encourage their autonomy and ability to deal with their own matters. Moreover, such a provision would be consistent with treating Metropolitan Toronto and its constituent municipalities as the most mature and sophisticated in the province. The granting of a general power would negate the necessity of determining all the possible appropriate areas of delegation in advance. In addition the problem of deciding at the provincial level to whom certain powers may be delegated would also be eliminated. It may be, as well, that any success in encouraging the policy-making capacity of municipalities will be enhanced by a general power to delegate, as it will be the municipalities who make decisions with respect to delegation. A general provision, by its very existence, may aid municipalities in developing a policy orientation because they must make decisions with respect to how different matters are to be handled, and may provide a number of different ways in which policy might be most appropriately developed. In short, such a provision is a key to changing the municipalities from inferior administrative tribunals to real levels of government.

There are, however, some serious problems with respect to granting to municipalities such a wide power to delegate. The problems centre on the political concerns of maintaining political responsibility for decisions which are made; and on maintaining a system of government consistent with the "rule of law".

Political Responsibility

With respect to the narrower concern of political responsibility it is clear that municipalities as organized in Metropolitan Toronto do not function on the basis of a cabinet or executive responsibility for administrative or legislative action. This, of course, is in stark contrast to the provincial and federal governments where each cabinet minister individually and the cabinet collectively is in theory responsible to the legislature for the actions of each cabinet minister and of crown employees. It can be argued that it is this responsibility which makes the delegation of authority at senior levels of government justifiable. Under such a system, it is argued, administrators are controlled by the cabinet and ultimately the legislature so that the exercise of discretion is made politically accountable.

There are a number of responses to such an argument. Firstly, of course, it is clear that such a system is not utilized in other jurisdictions, such as the United States. In such systems, where the legislative arm of government is separated from the administrative arm, authority is delegated by legislative bodies to administrators with ultimate responsibility for the exercise of that power being held by the executive. It would not seem difficult to adapt such a system to the municipal governments of Metropolitan Toronto as those governments are, in any event, modelled in part, after the American experience.

It should be noted as well that the abuse of administrative discretion under such a system is most probably no more severe, and indeed, many would argue, less severe than under the Canadian system. A Canadian legislature can dismiss its executive, and on a few very rare occasions it has done so. When the legislature, rooted in partisan loyalties as it is, fails to dismiss the executive, there is indeed little other political recourse available as a remedy.

Secondly, it is clear that aside from the occasional provision for direct appeals to the Lieutenant-Governor-in-Council there is little by way of legislative intervention in the policies or decisions of the authorities empowered to receive delegated authority. Even the Minister in exercising his responsibilities for the many administrative acts of his ministry such as the setting of contracts, the administration of personnel, and the ordering and carrying out of administrative priorities is not often affected by the Legislature's intervention. A major reason for the delegation of authority is that the main legislative body often finds itself unable or unwilling to deal with certain matters. Legislative interference therefore comes most often in the form of general amendments to legislation rather than interference in the details of policy or administration. As well, a

strong argument can be made that where delegated authority is being used to develop policy on a case by case basis through decisions affecting competing parties rather than by the promulgation of general regulations, legislative interference and control is not desirable because of its non-adjudicative and political nature.

Finally, it should be noted that it is clearly possible to provide for ultimate responsibility at the legislative level by either adopting a cabinet or strong executive model of local government.

It would seem possible to postulate three major approaches to ensure political accountability with respect to delegated authority. All three would involve the replacement of the Chief Administrative Officer's relationship with council with a relationship which consists of a political executive in lieu of the C.A.O. The first possible form for such an approach would be the strengthening of the office of mayor and thus allowing political accountability through him. This might result in the establishment of a kind of cabinet, on the American model, advising the mayor and assisting him in the administration of the City. Such a technique would clearly reflect the state and federal governments of the United States but would be the most foreign to the Canadian experience and tradition.

The other possibilities are more rooted in Canadian governmental experience at the federal, provincial and municipal levels. A second would be to use the existing administrative structures, the Boards of Control or Executive Committees and to strengthen the administrative responsibility of those bodies. Such an approach would circumvent the problems with the American cabinet model and would be in keeping with the functions presently performed by those bodies of appointing department heads, structuring departments, preparing estimates, and calling tenders subject to some control by council. This model could be instituted by granting to those bodies power which is similar to that presently contemplated for the Chief Administrative Officer under s. 214 of The Municipal Act, that is to have "general control and management of the administration of the government and affairs of the municipal corporation". Such bodies, as part of council, could then be called to answer for the performance of tasks delegated by the council. This approach would seem to be that of a middle road between an American system and a true Anglo-Canadian cabinet system.

A cabinet system is also something that could be created, and it is this model which we recommend. The detailed structures appropriate to Metropolitan Toronto and its area municipalities are outlined in Chapter 3 below. To develop this latter model it would seem possible to provide for the mayor and his executive committee to be elected by council and subject to recall by council in order to ensure political accountability for the exercise of delegated authority. Our purpose at this stage is merely to indicate that a concern regarding political responsibility for the exercise of delegated authority can be dealt with legislatively.

Political responsibility, however, is not an end to the matter. The provision of political responsibility over delegated authority may provide more of the appearance of protection and responsibility, than the reality of it. A challenge to administrative authority is not often taken directly to the legislature or the executive at federal or provincial levels. Rather in many instances the challenge to that authority is made in the courts by administrative law remedies, and by way of internal appeals. In many cases no action whatsoever is taken. What is important then, is to ensure that delegated authority can have its exercise and scope controlled by methods which do not resort to ultimate resolution by council. Although ultimate political responsibility is vital to a democratic system, it is only one way, and not a particularly successful way, to challenge administrative action.

Procedural Limitations

We are brought face to face with the issue of the "rule of law" once again. A clear concern with respect to authorizing municipalities to delegate authority is a resulting increase in the exercise of hidden or arbitrary discretionary power. Even given Ontario's cabinet system the Hon. J. C. McRuer expressed great concern with respect to such problems at the provincial level. Section 20(1) of the Anti-Inflation Act (S.C. 1974-75-76, c. 75) which provides in part that the Administrator, when satisfied that a person is likely to contravene the guidelines may make such order as he deems appropriate, is a clear example of unbridled discretion. The recent case of Mitchell v. The Queen (24 C.C.C. (2d) 241) indicates the incredible power of the National Parole Board. That Board was able to suspend an accused's parole eight days before its expiry and require him to serve the balance of his sentence without stating any reasons whatsoever for its action. Neither the courts, the federal cabinet nor the federal parliament came to his aid. A clear danger is the creation of the opportunity for such events to occur at the municipal level.

As mentioned above,the ability to delegate is an important new tool for effective municipal government. The real issue therefore is not whether to allow it but rather how to control, check and limit it so as to prevent the kinds of serious difficulties we have outlined. The question is one of finding a method of delegation which serves both the values of enhancing municipal policy development and the "rule of law". Unless an adequate balance of the two can be found it would seem inappropriate to suggest that a broad power to delegate should be granted to the municipalities in Metropolitan Toronto. That view does not mean that municipalities cannot be trusted as much as senior levels of governments with such powers; but it simply means that present abuses at the federal and provincial level should be avoided if the power to delegate is extended to municipal governments.

In seeking ways to prevent an abrogation of the "rule of law" at the municipal level, a number of alternatives are available. The courts have attempted to solve this problem by virtually only one method, that of requiring councils themselves to limit discretion in the by-law delegating the power. In this Chapter a number of other methods will be discussed. Councils for example could also influence their delegates by providing them with directions in the form of policy statements. There are other methods such as the requirement for complete public access to information regarding the exercise of delegated authority; the requirement that bodies exercising delegated authority do so by way of published rules and decisions; the requirements that authorities exercising delegated power adopt and publish policies which they must use for the exercise of their discretion, and finally the requirement of permitting appeals to council or some body reporting to council.

In addition to ensuring a wise choice from among those requirements, it is important to ensure that the rules and procedures adopted by sub-delegates at the municipal level are capable of being enforced by the courts. What is being suggested therefore is essentially a method for the structuring of discretion and the limiting of its scope while ensuring that council, using its delegates as it sees fit, has adequate means for policy development.

In order to understand this adequately it is necessary to understand the role of the courts in the judicial review of administrative and indeed governmental action. The courts' function in overseeing the exercise of legislative authority is not to examine the merits of an individual decision. In a constitutional question respecting the division of powers between the federal and provincial governments it is not the merits of the legislation in question which is challenged but rather the jurisdiction or capacity of either level of government to pass that legislation given the division of powers in the British North America Act. Similarly, with municipalities, the courts do not rule on the wisdom of a municipal enactment but rather on whether the municipality has the authority to pass such legislation. For example, the Court of Appeal in Ontario recently struck down a Metropolitan Toronto by-law restricting the hours of car washes - not because the Court ever considered whether such legislation was wise, but rather because it decided that Metropolitan Toronto had no authority to enact such restrictions pursuant to the power granted it under The Municipal Act and The Municipality of Metropolitan Toronto Act.[1] It is clear such authority is important in preventing abuses of power and should apply to decisions, policies or rules made by sub-delegates at the municipal level. Although the courts would appear to have inherent jurisdiction to determine such matters with respect to sub-delegates, a legislative enactment specifying so would seem appropriate.

In addition it would be necessary, to ensure that the exercise of municipal jurisdiction is kept within broad bounds, by requiring that any body, individual or organization receiving authority from a municipality could exercise only the authority so

received and no other. This would be a most important limitation for one could imagine a corporation exercising municipal powers and also exercising its inherent corporate powers to further the purposes of the municipality. With respect to the exercise of its corporate powers, which are very broad, it might use those powers for instance to buy land, or provide services which its delegated power did not contemplate. A typical existing example of this might be Central Mortgage and Housing Corporation which may perform many functions which are not reviewable or controllable because of its "corporate" nature. For instance, lands may be purchased, which are not related to the purposes of its enabling legislation.

At the municipal level there are presently boards of management created by municipal by-law, and their authority is limited to the management of an arena or community centre. However, there are also corporations created by the municipality for one purpose, but possessing all of the powers of any corporation. The City of Toronto Non-Profit Housing Corporation, The Toronto Arts Advisory Corporation and the Metropolitan Toronto Housing Company are all examples. Each of these corporations possesses all the power of any business corporation, and we appreciate the concern about abuse of power. While none possess more power than,say the T. Eaton Company Limited or Canadian Pacific Railways, at least the aggrieved citizen by the actions of a business corporation can accept that there is no identity of interest between his government and the corporation the behavior of which is disturbing him.

There are recent proposals in the City of Toronto recommending that much local administration might best be delegated by municipalities to local community corporations. One could envisage such a corporation being empowered to manage a park. Such a body would be able to purchase property as a result of its corporate status and then regulate the land as a park by virtue of its delegated authority. It would seem desirable to limit the authority of the corporation to only the management of specific lands.

We are discussing facilitating delegation, yet limiting the arbitrary use of discretion. One method is by providing limitations for and reviewing jurisdiction. In addition, there are other important ways to control discretion. These too require the courts to be overseers of the action of the recipient's delegated authority, not from the point of view of reviewing the merits of decisions but rather only to ensure that standards are set and arbitrary conduct minimized. In this way the courts are not actively involved in municipal administration or policy.

We noted elsewhere that municipalities generally cannot legislate on an individual basis but rather must do so generally.[2] It is most likely that such a provision would apply to any body receiving delegated authority, although the Mitchell[3] case is an example of a situation where pure discretion, without rules or reason was allowed. It would seem useful to clarify the situation and in any case where individual rights are to be dealt with, demand that municipalities require the establishment of published

rules by any recipient of their authority. Such a situation would ensure equal treatment of persons dealt with, and also enhance the ability of the courts to judge whether the delegated authority was being exercised in accordance with the terms of its delegation. That is precisely what the Legislature required when it permitted municipalities to establish Committees of Adjustment but insisted that the Committee rules be subject to approval. Any provision which permitted municipalities to enable other bodies to hold hearings and make decisions or to adjudicate rights would probably be dealt with by the courts in such a way as would require the rules of natural justice to be observed. However there is merit in the province stipulating that the municipalities of Metropolitan Toronto specifically require notice, hearings, and reasons in any adjudication. Not only would that alleviate any problems of judicial interpretation, it would also remind the council of its duties at the moment council searched the statutes for its powers.

The courts do not often require administrative bodies to publish policies which limit them in the exercise of their discretion. On the contrary,the Court of Appeal specifically stated that the Ontario Municipal Board could not fetter its discretion and decide cases on previously announced policies.[4] Similarly, the only basis upon which municipalities can limit their own power to pass future by-laws is the specific authority of an official plan or a policy statement under The Housing Development Act. While this may be appropriate for an elected government, we do not believe it appropriate for the OMB or any other appointed body. It would seem wise to enable the municipalities to require a fettering of discretion by bodies exercising delegated authority by the stipulation that those bodies must prepare and adopt policy statements which must be followed in the exercise of the delegated discretion.

Our list of restraints therefore encompasses the limitation of the authority of the subordinate body, the requirement that procedural rules be adopted and published, the requirement that provisions respecting notice, hearing, reasons and other elements of natural justice be observed, and the insistence that adopted policy statements govern the exercise of discretionary authority. Many of those matters could and should be left to the council. The council would have to limit the authority when it passed it on to a subordinate body. It could hold to itself the right to approve procedural rules and to approve (or even formulate) policy statements.

A further constraint is that in many cases the council will be appointing the actual persons exercising discretion, and the personality of those persons becomes a practical consideration. Courts have tended to avoid any consideration of the appropriateness of the persons to whom authority is delegated, but from a practical point of view the issue is a major one. Many people would accept the Fire Chief exercising discretion but would object if a council were foolish enough to give the same power to a convicted arsonist. Delegation to a committee of the council, or to the mayor, or to a municipal version of a cabinet

minister, is different in kind from delegation to an interested or disinterested citizen. While we do not advocate legislative constraint, we suggest that there will be serious practical constraints on the number of inappropriate appointments a municipal council can make. Unlike federal and provincial orders-in-council, municipal appointments are made in public, generally debated and often reported in the press.

Another method of controlling administrative discretion rather than maintaining all policy decisions at the council level is to require provisions for appeals to council or some body reporting to council with respect to decisions or rules made by a sub-delegate. Such a provision would, however, seem to be more concerned with council's review of the merits of the policy or decision made by its delegate rather than the procedure followed or abuse of discretion. Moreover, the requirement of such appeals to council in some ways runs counter to the whole thrust of delegation. It would seem, however, that council, in matters where there is an adjudication or a decision made respecting an individual by a sub-delegate, should be required to provide for an appeal. Such a provision would be in keeping with the general thrust of provincial legislation which in accordance with the McRuer Commission has provided for appeals from administrative tribunals. Therefore, it would seem advisable to require council to provide for appeals in such limited circumstances but not in lieu of one of the other procedural means suggested to limit discretion. Moreover, it would seem appropriate to enable council to establish the appeal procedure it deemed best. That is, council should be able to determine in most situations whether an appeal should be to itself or to a committee or to an individual depending on the nature of the body exercising power in the first instance. In addition, it should be noted that in many important areas, such as planning, provision is presently made for appeal to the Ontario Municipal Board. This will, however, be discussed in our chapter on Planning.

We have outlined a number of ways in which a general power to delegate can be made more compatible with the "rule of law" at the municipal level in Metropolitan Toronto. All of these methods or indeed most of them may not be suitable in any given situation. For example, if council were to delegate to a committee of council authority to hold hearings and make decisions regarding demolition permits it might not be suitable for council or the committee to adopt a policy in advance for the issuance of those permits. It may be that this can best be done by the development of policies through written decisions of the committee after hearings respecting individual items.

If authority is to continue to be given to the parks commissioner to grant permits for the use of the parks it may be desirable to require the commissioner to draft and publish a policy statement with respect to park permits. Such rules might well give first preference to programs actually sponsored by the Parks Department, and secondly to activities sponsored by organizations existing in the surrounding community. They might prohibit any user from charging an admission fee to any part of the park, require organized users to clean up debris, and matters of that sort. It

would also be appropriate for anyone denied a permit to be given a hearing and reasons.

If authority is going to be given to a committee to regulate parking, once again policies would be desirable and the formal decisions would have to be very explicit. Very firm rules respecting eligibility would be desirable if a committee were to decide on loans for house repairs. In short, it is desirable to enable council to delegate authority but since delegated authority may be exercised in many different ways, to also enable it to specify one or more of the above-mentioned ways to limit the exercise of that discretion. We feel that recipients of delegated authority should at least be bound by council's policy or rules, their own policy, their own rules or their own previous reasons of adjudication, if the "rule of law" is to be preserved.

Some would suggest that such controls are not enough and that the courts are not suitable to handle the supervision of such matters. In response we would state that this technique has its origins in the present legal system in that administrative agencies in many situations are required to make rules and give reasons. Moreover, with respect to policy statements, municipalities are presently required to use such a technique to limit their own authority - with respect to planning through official plans, and with respect to housing through approved housing policy statements.[5] These policy statement requirements have, it must be admitted, not resulted in much litigation, although there has been at least one recent and important case on whether a zoning by-law was in conformity with the official plan.[6] This, however, does not mean they are ineffective. Clearly the desire is that relief in the courts be only a last resort and the requirement of such devices, in itself, is the most effective limitation on abuse.

We would suggest that the exercise of delegated authority in the ways mentioned be accomplished through the passing of resolutions, the making of orders, and in cases involving adjudication, written decisions. The promulgation of rules or policies at a sub-municipal level should always be exercised in this way to ensure their legal reviewability. If the Fire Chief is to decide on what fire equipment is required in a building, the owner should be entitled to a written statement of the policies being followed, a hearing, reasons, and a formal order requiring installation of a fire extinguisher. We do not propose that the Chief simply tell an individual what to do. Definite governmental action should be taken on these matters to validate them and to ensure that they are seen as governmental rules or policies, and thus reviewable in the courts.

In addition to the requirement of formal action, it is desirable to provide for public access to all rules, policies and decisions, at both the council and sub-council level. Delegation we have maintained is essential for a better policy role for council but it should not be a way of hiding municipal action. The present provisions in The Municipal Act and The Municipality of Metropolitan Toronto Act are not broad enough to cover this

problem. S. 216 of The Municipal Act essentially covers documents in the possession of the clerk and while everything the council receives goes to the clerk, the present Act does not contemplate delegation. One solution would be to require all those to whom power is delegated to deposit their material with the clerk. Section 19 of the Metro Act does not provide appreciably more, although it does specifically include the minutes and proceedings of all committees.

In summary, we would suggest that although a broad power to delegate brings with it many concerns with respect to the "rule of law", those concerns must be weighed against the value of enabling the municipalities of Metropolitan Toronto to develop and implement policy in a manner similar to the senior levels of government. Those concerns can best be dealt with by restricting the right to delegate not by reference to substantive areas with which the municipalities deal, but rather by way of reference to the procedures which they must follow. Legislation requiring at least one of the methods suggested would enable council to choose a method which would most effectively control the exercise of the particular discretion granted. In addition the requirements of administrative resolution and public access would provide further protection. The provision of appeals to council, its executive or another body established by council where the decision of the sub-delegate in the first instance affected a particular individual or applicant is also suggested. It would seem desirable to enable the council itself to decide upon the nature of the appeal body.

We recommend that general delegation be allowed but in a way that not only provides the safeguards presently felt to exist as a result of the rule against delegation, but that also strengthens those protections. If such a proposal were adopted the council of a municipality could, for example, delegate authority to grant loans for residential rehabilitation to a small committee. Council, in so doing, could stipulate that a hearing be held, could further provide some general guidelines for the committee to follow and could further provide that the committee draw up and adopt detailed policies respecting the exercise of its authority and require it to give reasons for the granting or refusing of an application. Since individual rights are involved, an appeal would have to be provided. Such a situation seems more desirable than leaving such a decision to a chance vote in council. Besides his right of appeal, the applicant could have recourse to the courts for judicial review if he found that he was entitled to the loan because he filled all the prerequisites adopted by council and the committee. Today the same person would have trouble even finding the rules.

Similarly, if a municipality were to delegate authority to run an ice arena and to allocate ice time (for which there is already authority) the committee or arena board responsible for such a task would be required to establish policies for the allocation of ice time and groups or individuals who applied for the use of the ice and were refused would have an opportunity to appeal, for example, to the Commissioner of Parks, or a Committee on Parks and Recreation.

Conclusion

We feel that the openness of the procedure, the requirement of reasons and the right of appeal would make applications for judicial review rare. We do not believe that the courts would be inundated with many new claims. It is important to note that the establishment of such a procedure at the municipal level would provide more protection for individuals than the existing system, not only by ensuring the opportunity for an appeal and judicial supervision but also by providing a more open and structured process.

In addressing the problem of general delegation we have assumed that councils can best decide to whom they wish to delegate authority. It would seem that any initial move towards delegation would probably be to committees of council or employees of council who would be given specialized legislative or adjudicative tasks. The issue of delegation to groups within the community for the purposes of neighbourhood government has therefore not been directly dealt with. The main reason for this is that under a general power to delegate it would be the municipalities which would decide if they desired to establish community boards or organizations. As noted above, there are limited versions of such organizations provided for in The Municipal Act. For example s. 352(74) of that Act enables municipalities to establish boards of management for community centres, and s. 361 provides for boards of management for improvement areas. It would not seem unlikely that municipalities might wish to establish such organizations for other purposes, such as residential improvements, multi-use centres, or to aid in the co-ordination and integration of municipal services at the neighbourhood level.[7] A broad power to delegate would provide the municipalities with flexibility to provide for such matters without in any way mandating a new level of local government. To make that clear, we suggest that it would not be appropriate that the power to delegate should enable municipalities to completely abdicate their responsibilities to another organization or body. Our suggested procedural restrictions inhibit such a possibility, but we suggest as well that a general authority to delegate not be so broad as to enable the delegation of authority to levy taxes.

A general power to delegate, along with procedural and financial safeguards provides the greatest opportunity for enhancing municipal decision-making and granting municipalities within Metropolitan Toronto many of the tools of government. It is consistent with the preservation of the "rule of law" and the preservation of the integrity of the municipality. We therefore recommend it.

CHAPTER II - ORGANIZATION OF MUNICIPAL CORPORATIONS

Introduction

Classical descriptions of governments distinguish between the functions of the legislature, the executive and the judiciary. Put simply, the first makes laws, the second takes action to administer the laws (including both managing public resources and delivering services) while the third makes enforceable decisions as to how the laws fit particular circumstances.

The pattern we are used to in Canadian politics is that of an elected legislature, an administration that is constantly responsible to the legislature, and a judiciary appointed by the administration. We use the sovereign as a symbol for the ongoing nature of the administration which consists of the Governor or Lieutenant Governor-in-Council, and we use the sovereign directly to own the public property of the nation or a province, dividing her conveniently into The Queen in Right of Canada or The Queen in Right of Ontario.

At the municipal level it first appears that all three functions have been assigned to the elected council. All by-laws are enacted by the council, making it look like a legislature. Some judicial and quasi-judicial functions are performed by the council, such as the council's right to act as a court of revision on assessment cases, or hear and determine applications for demolition permits. Since the prohibition against delegation of functions is a strong one, as discussed above, many trifling matters of administration are also dealt with by the council.

We therefore have a municipal council that is highly constrained in what it can do by both the statutes giving it power and by its sources of revenue, but which, when acting in areas where it does have power, appears to unite in one body the judicial, administrative and legislative functions. While the reality is somewhat less united and somewhat less omnipotent than this short description might suggest, it is worth considering how we came to this state of affairs.

It has been argued that the model for Ontario municipal government was the New England town meeting, and that the form was brought to Ontario by loyalists following the American War of Independence. However much that model may seem to be what was finally created, the pattern by which local government developed appears to have been otherwise. Glazebrook's social history of Ontario[1] draws a picture of local government entirely in the hands of appointed local magistrates, with certain officials such as a clerk, assessor and keeper of highways responsible to the magistrates. Some officials were elected while the magistrates themselves appointed others. The magistrates had a very limited power of taxation and had power to make regulations concerning the prevention of fire.

The system had its drawbacks, and as early as 1816 the magistrates and inhabitants of Kingston were petitioning the Assembly for more power. Their concerns were with the state of the roads, with their inability to make building codes and to compel inhabitants to keep fire fighting equipment on hand, and with a desire for some consumer protection regulations ("to fix the size of bread"). Examining the list of concerns today one might conclude that little had changed over a century and a half. The private legislation being sought by metropolitan municipalities over the last few years has included requests to regulate housing standards, rents, peddlers and a request for more taxing power for sewers.

The Legislature responded first by a series of acts giving magistrates in the Courts of Quarter Sessions more power. By the 1830's elected corporations began to be created to administer those matters which had previously fallen to the magistrates. These were first referred to as Boards of Police, and when Toronto was made a city in 1834, the mayor and aldermen continued to be justices of the peace. It is from these traditions that a mayor is still referred to as the "Chief Magistrate". It also helps explain the blending of legislative, administrative and judicial functions still found in municipal councils. While the formal judicial functions have now been reduced to a minimum, much of the council's work, in planning and a variety of other matters, continues to be one of arbitrating disputes between private parties. Local councillors are no longer automatically justices of the peace but justices still have the power to hear and determine prosecutions under municipal by-laws.

A number of documents on local government have recently called for the local council to become a more "policy" oriented body, with committees of council clearly labelled as policy committees, and with all administrative matters delegated to appointed staff.

The kindest thing that can be said of such a distinction is that it is probably made by those driven to their wits' end by the collected administrative trivia of local council meetings. However, the distinction flies in the face of all our traditions of local government, and has not been used by any other level of government. Any system of government needs the power to enact regulations and administer them, and the process of administration frequently involves the establishment of tribunals to determine the extent to which the regulations apply to particular cases. In practice, the formulation of regulations is usually deeply intertwined with the system of administration and with the appointment of staff to conduct the administration. That is so at all levels of government.

When the government of Canada proposes changes in income tax law to Parliament, it does so with a consideration of both the government's revenue requirements and the administrative needs of the Department of National Revenue. Exemptions are broadened or narrowed and tribunals are established at least in part on the basis of the experience of the civil servants administering the law.

By the same process, changes in the staffing of a particular agency or department are a responsibility of government and are a proper subject for discussion in the legislature. Those purely administrative matters are frequently of more public concern than any bare issue of policy. Parliament has spoken on the policy considerations that ought to govern the awarding of airport contracts or the behaviour of senior civil servants. It also demands the right to discuss whether those policy concerns have been appropriately administered by the government and most citizens would agree that those matters should be publicly discussed.

Any federal or provincial minister, and many local politicians, would agree that a separation of policy development from administration would be at best inadvisable and is more probably impossible. If a minister of agriculture is receiving criticism from farmers on, say, the way crop insurance works, the minister's first act will be to meet with the people who run the crop insurance programme and see what they have to say about it. After due deliberation the minister may conclude that the only real answer involves some changes of personnel in the crop insurance office, and he will discuss those with his deputy and expect to seem them carried out. True, the minister may have to give policy directions to staff, and he may even have to see those put into legislation, but through it all the control of administration and policy development rests in one office and indeed in one person.

In our view, government does not work very well any other way. It used to be the case that policy recommendations were made to ministers by their deputies, and when the recommendations were accepted, the deputies carried them out. The deputies tended to carry out the recommendations very well, since they had made them in the first place, and had a good idea of how they would be implemented.

Now a considerable number of people work on the personal staffs of ministers and indeed of local councillors giving policy advice. When the advice is acted upon by the minister or by a municipal council, some ongoing department or ministry must try to form the new policy statement into a workable efficient public programme, and to administer it. The division between policy making and administrative functions can cause serious difficulties.

Some of the basis for the division of functions may be found in the major movement to remove politicians from municipal administration in the latter years of the nineteenth and the early years of the twentieth centuries. It was based in the United States and was designed to deal with the phenomenon of corrupt boss politics. It gave rise to the theory that municipal government should be a sound businesslike administration without political interference. We look on that as a dangerous theory, which can have the result of making local government a remarkably undemocratic institution. The major fruits of the movement for businesslike reform were the establishment of both City Managers and a variety of special purpose bodies, including the Board of Control. We do not believe corruption to be a present problem in Metropolitan Toronto, and we believe that the electors have shown an ability to deal with any hints of corruption that have arisen.

Certainly it is to be hoped that municipal councils can concern themselves more with policy and less with the details of administration. That situation can be achieved by a combination of wise laws, wise local councillors and an appropriate administrative structure. It would, however, be a mistake in our view to unduly restrict the council's ultimate responsibility for administration. The day when a municipal civil servant can tell his council that a particular matter is beyond the scope of the council's authority as being a matter of administration will be the day when the system goes out of control.

We ought also to recognise that the politician's close familiarity with the details of administration has been one of the strengths of local government. When Albert Campbell gave his inaugural address as Metropolitan Chairman in 1970, he boasted that he knew Scarborough so well that if you named any intersection of streets in the Borough, he could tell you the direction in which a spilled cup of water would flow. He hoped to learn as much about the rest of Metropolitan Toronto, and only his death and the fact that local sewers are an area municipality responsibility prevented that.

Many observers feel that local governments do a highly efficient job of providing local hard services, and one of the reasons for that has been a system that gave the local politician a close working knowledge of exactly how the services were delivered. That benefit should not be discounted.

It is also true that many if not most policy changes at the local level have resulted from the fact that a series of apparently trivial decisions were made by the council as a whole. Toronto moved to a policy of letting local residents have a voice in road widenings only because every road widening came before the council. In the same way, the policy of licensing vacant lots as "temporary" parking lots was only changed because council noticed that some licences, which the council had to renew frequently, had been in existence for over twenty years. But the problem is that councils may become lost in administrative detail and never see the broader policy perspectives. There is much to be said for forcing the legislative branch of government to actually deal with its own ongoing programmes. The starting point for a change in policy probably ought always to be a clear understanding of the existing policy and the administration supporting it.

Having said all of that, we are brought back to three features of present-day reality. The first is that the municipal councils do spend an inordinate amount of time on administrative matters. The second is that certain members of the council and the staff do exercise administrative responsibility. The third is that the power of the council to change its own systems of operation is severely constrained by both provincial statute and its own traditions.

The means by which councils might be permitted to free themselves of consideration of many administrative matters are discussed in Chapter I on the Power to Delegate. The other two matters mentioned above - the present extent of delegation, and

the power of the council to change its system - go to the question of how a power to delegate might best be granted and used.

In considering what actually happens at present, we should be aware of certain sections of The Municipal Act and the role of the executive organization of council. Section 241 of the Act states that, except where otherwise provided, the powers of every council shall be exercised by by-law. That section creates a significant pressure for everything done by the municipal corporation to be referred to the council. Councils tend to pass specific by-laws about as many matters as possible, and then to "confirm" everything else they have done with a confirmation by-law. As long as that provision remains unchanged, municipal solicitors will continue to advise that many matters be referred to the council and be confirmed by by-law.

The Mayor

The Municipal Act does, however, provide for some duties falling upon persons or bodies other than the council. The Mayor is described in sec. 209 as being both head of the council and the chief executive officer of the municipal corporation. His duties, as contained in section 210 are:

(a) to be vigilant and active in causing the laws for the government of the municipality to be duly executed and obeyed;

(b) to oversee the conduct of all subordinate officers in the government of it and, as far as practicable, cause all negligence, carelessness and violation of duty to be prosecuted and punished; and

(c) to communicate to the council from time to time such information and recommend to it such measures as may tend to the improvement of the finances, health, security, cleanliness, comfort and ornament of the municipality.

In addition, section 212 permits him to call out the posse comitatus to enforce the law.

The actual functions of a mayor are difficult to define. In general, the job has become what the incumbents have made of it, and the designation "chief executive officer" has rarely, if ever, been put to any test. All municipalities in Metropolitan Toronto have made a practice of assigning all specific executive duties to members of the civic service.

Mayors, of course, perform a variety of ceremonial duties. Some have developed a sufficient interest in and capacity for policy initiatives that the councils have looked to them for leadership. Most mayors have been looked upon by

their councils as having a leading role in "external affairs", generally in negotiations with the provincial or Metropolitan governments but sometimes with federal ministers. In addition to his duties with his council, the mayor functions as chairman of his council's Board of Control or Executive Committee, and in that capacity he is frequently concerned with senior personnel matters.

Our discussions above have described the role of the mayor, but have not touched upon the appropriateness of that role. There are two directions in which change could take place. On the one hand, the mayor could be given increased powers, following the pattern of U.S. "strong mayor" systems. Such a system would basically confirm the mayor as chief executive and ought to permit him to appoint department heads. In our opinion, such a system could be introduced without doing violence to the Canadian tradition of an independent civil service. The persons appointed would act more like ministers than permanent department heads. It might be necessary to establish an equivalent to civil service commissions in order to guard against patronage appointments within the civil service, but that could be done.

We do not recommend that this system be followed, but we feel that it is worthy of consideration since it would be an accurate reflection of the powers which we think the public probably assumes that a mayor exercises. The election campaign of a mayor in any of the larger area municipalities is a very major undertaking. It involves more electors than are faced by any member of the Legislature. It involves no subsidy by public funds and it requires no disclosure of expenditure and sources of funds as is now required at every other level of government. The public understandably believes that the election involves a matter of some consequence. If that sort of election is to continue, one reasonable thing to do would be to give the mayor powers commensurate with the process of election he or she has gone through.

Another approach to the office of mayor would be to make the mayor something more akin to a parliamentary leader, with responsibility to his council. That system would require that the mayor be chosen by the council. The system could not be a complete copy of the parliamentary system, since most people would probably not want to see uncertainty about the date of elections or the possibility of a non-confidence motion precipitating elections. It is that feature of the parliamentary system, more than any other, which gives rise to the extremely rigid party system found in Parliament and in all of the provincial legislatures. The public may be willing to accept the development of municipal political parties (which might be significantly different from the provincial and federal parties), but it is probably not willing to see a system created where the development of parties would be seen as a necessity for the functioning of the system.

However, a mayor could be chosen by a council without the need to precipitate elections upon the loss of confidence. In essence, the choice of the Metropolitan Chairman is presently done on that basis. If one wished to provide for a slightly greater degree of flexibility (as might be very appropriate if the term of office were extended from two years to some longer period) one might then provide for the mayor being replaced by some other member of the council by a vote of at least fifty percent of all the members of the council, such vote to be taken after at least two weeks notice of motion and such vote to name the new mayor. Such a system would mean that the mayor would have had to have lost a considerable part of his council support before he could be replaced.

Such a system would be in considerable accord with Canada's political tradition. He would be as popularly elected as is the Premier or Prime Minister. While the change would not give the mayor the "strong mayor" powers of a U.S. mayor, it would give him such a credibility with the remainder of council that it is likely that the mayor would be in a very strong position to influence the choice of executive committee members, and a municipality with a council-chosen mayor would require a council-chosen executive committee.

Such a system would certainly tend to foster the development of municipal political parties, and there is of course much to be said in favour of such a development. On the basis of the political alliances that have in fact developed in certain of the Metropolitan municipalities in the past five years, it would not appear that the local parties would necessarily be a mirror of the provincial parties.

Ontario has prided itself, over the years, on a tradition of strong and independent local government. It is probable that at the present point in time, most of the citizens of Metropolitan Toronto would favour continuing with a system of a mayor elected at large, simply because that is the system they are used to. Some, however, would be ready for a change, and to the extent that a Metropolitan Chairman who is not elected at large continues to be the pattern, more citizens may come to see merit in the system. Were it not for the problems that the continuation of a two-tier system of local government entails, we would be therefore inclined to recommend that the system by which the mayor is chosen be made a matter to be determined by each of the councils.

Organization Of The Executive

Boards of Control are provided for in sections 203-208 of The Municipal Act and all area municipalities in Metropolitan Toronto have such Boards except the Borough of East York and the City of Toronto. In the City, special legislation provides instead for an Executive Committee elected by the council from among the aldermen who, in each ward, received the largest number of votes. The Board of Control has the duty of certifying the spending estimates, calling for tenders and awarding contracts, nominating to the council all department heads and, after a favourable report

by the department head, all other officers, clerks and assistants. It may dismiss or suspend a head of department, and may perform such other duties as the council assigns to it. In the Borough of East York the council as a whole carries out the responsibilities of the board of control.

In view of its responsibilities for financial and personnel matters, one might well see the Board of Control as the administrative arm of the council. In practice, it generally functions as such. However, the council can overrule the Board by a two-thirds vote, and the result is that virtually all Board decisions are reported to the council and may become the subject of debate. This is bound to be so in any political structure where the Board of Control is not required to have the continuing confidence of the council, and thus be seen by the council as an appropriate body to make final decisions on administrative matters. As early as 1960, Donald Rowat proposed that members of the Board, including the mayor, be chosen by the council from among its members.[2]

The City of Toronto is the largest of the area municipality councils, numbering 23. The Executive Committee there numbers 5 and a two-thirds majority would be 16. If the Executive Committee is unanimous it need only find three other members of council to support it, and any three members of the Committee can operate if they have five supporters on council. The figures are similar in other municipalities.

Boards of Control and Executive Committees have been inaccurately compared to a cabinet. The Board is not responsible to the council since the controllers and mayor have been elected at large, and even in the case of the City of Toronto Executive Committee, the mayor is elected at large and the Executive Committee members are not specifically required to have the continuing support of the council. These factors have combined to prevent anything but a most informal division of responsibilities to take place among the members of the Board. In the Legislature the collective responsibility of the cabinet is assured by the Premier having the support of a majority of the members (or at least of the largest single group of members), by the Premier choosing the cabinet, and by the cabinet meeting privately. Lack of cabinet unity can result in dismissal or indeed the resignation of a government and a general election.

In municipal government virtually none of those constraints can operate. The Board of Control meets publicly. Its members owe no political loyalty to each other, and indeed are frequently political opponents of each other and of the mayor. Their constituency is different from that of the council members. They are, therefore, free to differ, and often do so. Their differences can never precipitate a general election, and are generally submitted to the council for resolution. In these circumstances, it is not surprising that no system of ministerial responsibility has grown up.

Even if the municipality had the power to appoint one of its number, as "minister" of a particular department, and even if it had the power to delegate to such person much of the responsibility for the decisions affecting that department, it would have great difficulty exercising the power. None of the conditions

that generally assure a minister the support of a majority of the legislature exists in municipal government. Since they do not, the council is likely to want anyone exercising a minister-like authority to report everything to it for review, thereby defeating much of the purpose of the delegation.

None of the foregoing is to say that some amounts of informal delegation may not be possible. During the 1975-76 term the Municipality of Metropolitan Toronto established a number of committees to review the budgets of operating departments, and the chairmen of those committees have accepted the responsibility of defending the spending estimates of the departments they have reviewed. That is a small step towards specialization.

In the City of Toronto some member of the Board of Control or Executive Committee has generally functioned as a sort of chief administrator. The person doing this job has sometimes been assigned special responsibilities for the municipal budget by his or her colleagues on the Board or Committee, but this has not always been the case. At one time an attempt was made to institutionalize the office under the title President of Council, but it then turned out that the person doing the job was not always the person so designated.

The job is an interesting one, somewhat analogous to that of executive officer on a ship. Occasionally an incumbent in the job has become mayor, and interestingly enough, someone else then began doing the executive officer job.

Perhaps not too much should be made of the phenomenon. It appears not to have a parallel in the small Boroughs of York and East York (where the mayor performs this function), and only time would tell whether the job would develop in the Boroughs of North York, Scarborough and Etobicoke. We mention the job because its existence reveals something for which municipalities have a felt need, and that is a member of the council who is perceived by all to be responsible for ongoing administration.

Some discussions suggest that the need could be met by a universal system of Chief Administrative Officers, or City Managers. Certainly there are some advantages to those systems and opinion in Ontario is tending towards them despite certain recognized disadvantages. However, no amount of staff capability can ever be a substitute for a member of council who has clear administrative responsibilities. Such a member must act in part like a government whip, and see that necessary business is transacted. He must take some responsibility for the times of council sittings. Various senior members of the civil service must have access to him, so that if council is about to embark on a course its staff believes to be administratively unworkable, council can count on being at least warned and perhaps dissuaded. The incumbent, it goes without saying, must have the confidence of a significant proportion of council members to function effectively.

We raise the example of the growth of this unnamed position in the City of Toronto not as argument for the creation of a new municipal office, but rather as support for our belief that local governments are capable of creating those offices that they need. The major difficulties are caused by the shortness of the municipal term of office and the relatively sudden changes that can take place in the composition of local councils. Given a reasonable time span, a reasonable amount of continuity and a reasonably clear statement of their responsibilities, we believe that local councils will find the systems that suit them to perform their tasks and in the absence of the present structural constraints would ultimately move to a cabinet system of government. What we will be advocating below is an executive responsible to the council and the ability of the council to delegate authority to that executive. This would ensure that municipalities would have the ability to develop policy in a coherent way.

Standing Committees

There are other aspects of the political structure of the municipalities within Metropolitan Toronto that have a considerable effect upon administration. In most of the municipalities, standing committees of the council consider matters that touch upon the work of operating departments. Thus the committees on public works normally consider the capital and operating budgets of the various public works departments, and so forth. What develops in these circumstances is a tacit understanding that the department more or less works for the committee, and many matters of departmental operations tend to be discussed with the committee and go no farther. While most important matters will eventually have to go to the council, this is not inevitably true, and even in the case of many matters that do go to the council, much of the real decision-making power will rest with the committee.

The extent to which committees exercise effective staff control varies with the composition of the committee. The structure of standing committees varies considerably in the different municipalities. The City of Toronto has four standing committees with eleven members each, so that each alderman sits on two committees and each committee has, normally, one alderman from each ward. The Metropolitan Council has six committees of five to seven members each, with no member of council sitting on more than two committees and many serving on only one. In some cases the smaller area municipalities are unrepresented on a particular committee. In East York there are eight standing committees; each member of council is on four committees and is chairman of one of them. The committees all meet on the same day, one after the other, and the practice is for most of the members of council to attend all of the committee meetings.[3]

These examples are significant to this report because they raise questions as to what the political structure of municipalities ought to be, and by what process they ought to be fixed. At the present time the municipality is free to adopt any

committee structure it wishes and the structure it chooses will have a profound bearing on the functioning of the administration. It would appear appropriate to leave the municipality with the power to fix its own committee structure, particularly if a broad power to delegate is granted.

Special Purpose Bodies

Although it is not within our mandate to analyze the functioning of individual boards, commissions and special purpose bodies, we do wish to examine such bodies within the framework of the system of responsible government we have outlined.

Much of the criticism directed at special purpose bodies appears to us to be related to their lack of accountability. Some were set up with just that feature in mind, a desire to remove particular kinds of decisions from the political arena. We touch on that matter in our section on services, and generally conclude that those objectives may continue to be valid but that it should be up to the municipal council to determine this issue, and that the council should be able to dissolve many of the bodies if it saw fit to do so.

We believe that many of the bodies in question are established so as to enlist the skills of citizens with particular talents. Arena boards are established so that neighbourhood residents will program "their" skating rinks. Library boards recognize the particular interest of certain citizens in the library service. We see nothing dangerous in that concept.

We suggest that municipal councils should not be required to work through any such board structure and should be free to provide services through a department of local government whenever the council chooses to do so.

Secondly, we suggest that board appointments should be for the life of the council only, and that new appointments should take place after each election. This would permit a new council with new views to appoint new faces, and would make it clear that the council was responsible for the performance of the boards.

It must also be recognized that some agencies are established for purposes of resolving inter-governmental conflicts, and that they are useful in that regard. The Toronto Harbour Commissioners, for example, are designed as a body to deal with federal port policy in a way compatible with local land-use control policy. The Metropolitan Toronto and Region Conservation Authority was designed as an agency to involve representation from municipalities within a particular watershed, and as a device for chanelling provincial funds into essentially local conservation projects. A problem with special purpose bodies such as these is, nevertheless, their lack of clear accountability to a particular political body.

The City of Toronto Non-Profit Housing Corporation is an example of an agency that functions as if it were a department of local government, and is in existence only to satisfy the requirements of federal legislation. There will be other occasions when such corporations will be required. This corporation is an example of very full but very highly controlled delegation. The corporation has all of the powers of any corporation and therefore requires very little authority from the municipal council. Most of its house purchases do not require council approval. However, City Council has required the corporation to report in great detail on its operating policies and on its proposed major projects. The result has been a high level of debate on housing policy and very little debate on trivia.

This can be looked upon as a situation where, by an accident of legislation, a local council acquired an almost total power of delegation in a sensitive policy field. The power appears to have been wisely used, and is an argument for permitting councils to create special purpose bodies subject to the constraints we have outlined.

Representation

There would appear to be good reason to question the utility of having all matters of representation determined by the Provincial Legislature. The question, for example, of whether there ought to be one alderman or two for each ward is perhaps best seen as a matter for local determination, and that question will also affect the issue of the number of wards which there should be. The Legislature itself deals with these questions, in respect of representation to the Legislature, and very properly takes the advice of an independent commission on the details of riding boundaries. There the issue of representation is reviewed on the basis of each census. While any system of establishing a basis of representation must guard against the possibility of incumbent politicians establishing a system that will suit their needs rather than those of the public, it is questionable whether a process that relies upon occasional applications for special legislation really serves that objective adequately.

In our view, there are a number of issues concerning representation which ought ideally to be decided locally rather than by provincial legislation. Those issues are the size of the local council, the question of whether to have a Board of Control or an Executive Committee, the question of whether to have a ward system and, if so, the question of what number of representatives are to be elected from each ward. In those cases where an Executive Committee system is adopted, then the basis upon which the committee members should be chosen should also be decided locally. In the case of each of the foregoing a by-law passed by council could be the instrument by which the choice is made, and it would be reasonable to require that any such by-law be fully effective not less than six months prior to the date of the next scheduled election. Legislation could require that any such by-law be subject to Municipal Board approval, thereby permitting public objections to be recorded and heard, but there is considerable question as to whether such an approval process would really contribute very much

to the democratic process. No such review is conducted of similar determinations made by Parliament or the Legislature.

Although we have noted that ideally these matters should be left to the local municipality, this will be impractical in a two tier Metropolitan system where there is a close interrelationship between the two levels of government. The question of ward boundaries is presently a responsibility of the Municipal Board, and we are of the view that it is an appropriate body to continue to deal with that question. Further, we suggest that a review of ward boundaries should be conducted at least every ten years, following the federal census, and municipalities ought to be free to ask for a review at five year intervals. The fixing of ward boundaries ought to proceed as it does now upon the initiation of the municipality.

The question of how the political structure of the Municipality of Metropolitan Toronto is determined raises other considerations than those considered in respect of area municipalities. There are a variety of interests to be accommodated, and it appears to be the province that must assure that there is basic fairness. An obvious example is that of ensuring that representation on the Metropolitan Council, by area municipality, is roughly in accordance with population.

Other issues require a consideration not so much of mathematical fairness as of the sort of government which the province hopes Metropolitan Toronto will be. If, for example, each area municipality were to choose all of its representatives to the Metropolitan Council, then those representatives would see themselves as primarily the delegates of their local council, and the Metropolitan Council would in many ways be a forum for resolving differences between area municipalities. On the other hand, all or most of the members of the Metropolitan Council could be directly elected to the Council, from Metropolitan wards, with little or no responsibilities for area matters. If that were done then a body quite independent of the area municipalities would have been created, and it would become even more important that the division of responsibility between Metro on the one hand and the area municipalities on the other be defined with precision.

The present Metropolitan Council is a compromise between these two extremes. Apart from the chairman, all members of the council are also members of area councils. A small number of members are chosen by the area council to sit on the Metropolitan Council, but most members sit on the Metropolitan Council because of some feature of their election to the area council. The system is a compromise precisely because there is a variety of objectives to be obtained, and no such system can be expected to do all things perfectly. The first question we must consider is whether the Metropolitan Council is the appropriate body to make those compromises and decisions, or whether those matters must continue to be set out in provincial statutes or whether, indeed, they might not best be left to the area municipalities.

Ideally the Metropolitan Council should decide on the absolute size of the council. A representation by population formula could decide on the allocation of seats on the council among the area municipalities, and this could be reviewed at the

same ten year intervals as are proposed for ward boundaries and are used for the distribution of seats in the House of Commons. But again, given a two tier system we are concerned about the practicability of such an approach.

We gave earnest consideration to various means by which the Metropolitan Corporation and the area municipalities might be empowered to fix their own political structure. We finally concluded that at least some of these matters would have to be disposed of by provincial statute, and we will therefore proceed to discuss the merits of different political structures.

One of the great strengths of the present system is the very close connection between the Metropolitan and area governments. In matters as apparently trivial as traffic controls, an interested member of council is often able to arrange for consistent, complementary decisions being made by the two councils in a space of days. Conflicting views of Metropolitan and area staff can often be brought to a speedy resolution by the intervention of politicians. When both sets of staff are responsible to the same politicians, that is both possible and usual. When one contemplates the delays that take place between federal and provincial governments, one must recognize the value of having the same politicians at two different levels and we would not wish to see that benefit lost.

On the other hand, the Metropolitan Council members have sometimes been described as being overly concerned with parochial matters. This is bound to be the case. All members of the council are elected, first of all, to their local councils, and their election campaigns and their commitments to their constituents reflect that process of election. A person elected to fix the potholes (or indeed provide timely official plan protection to a small neighbourhood) is likely to devote more time to dealing with those issues than to anything else.

The result has been a real difficulty in attracting politicians to the work of the Metropolitan Council. Council members as a whole tend not to be as well prepared for major policy debates as they might be at their area council. It has sometimes been difficult to recruit members willing to spend long hours on matters such as budget review. The natural leaders of the council, the executive committee members, are the mayors, controllers and executive committee members of the area municipalities, and in consequence they tend to be very busy people, frequently overworked with area duties alone. The Commission's report on "Political Life in Metropolitan Toronto" confirms this view.

One result of this state of affairs is that the Metropolitan Chairman has sometimes had to play a stronger role than might otherwise be healthy. Another result is that Metropolitan council members have, on the whole, acquired less close relationships with Metropolitan staff than has been the case in the area municipalities. This situation has meant less concern over the state of the civil service than is seen in some of the area municipalities, as was perhaps reflected by the late Albert Campbell's

establishment of a committee on personnel. Indeed, much of the impetus towards the establishment of a Chief Administrative Officer within the Metropolitan Corporation can be traced to a general feeling that the council itself was not in sufficient control of the administration. Appointment of a Chief Administrative Officer treats the symptom but not the cause.

A solution to the problem that has been much discussed is commonly referred to as "direct election to Metro". That can mean various things to various people. We believe it to be an appropriate solution if used in a particular way.

In outline, we propose that Metropolitan Toronto be divided into wards and that one member of Metropolitan Council be elected from each ward. Those members would also be members of the area municipal councils. However, the area municipalities would be composed of both the members of Metropolitan Council elected from that area municipality and by others elected from area municipal wards which ought to be largely contiguous with the Metropolitan wards.

The system can best be described by example. There are at present 11 City of Toronto wards. If Toronto was to have 11 representatives on the Metropolitan Council, one would be elected from each ward. If Toronto wished to have a council of 22 members, then one City Councillor would also be elected from each ward. If Toronto wished a larger council, then each Metro ward could be divided into two City wards, with one person elected from each, for a total of 33.

In our opinion it is vital to the system that candidates for office choose to run as Metropolitan representative or area municipal representative. At present all candidates run for both offices, and the one with the largest number of votes goes to Metropolitan Council. Under our proposed system, one field of candidates would run for Metro, a second for the City. Candidates would have to choose the office for which they were running.

It is important that the wards for both systems be contiguous. If the wards are identical, or the area wards fit into the Metropolitan wards, it ought to work very smoothly. An area the size of Downsview or Riverdale would have its Metro representative, while Riverdale South and Riverdale North would each also have its City representative.

We have suggested earlier that ideally the area municipal council might be the appropriate agency to decide on whether it wishes a ward system, the number of wards it wishes, and the number of local representatives to be elected from each ward. We now must temper those statements further as we consider Metropolitan needs. It seems to us that ward systems are so well established within Metropolitan Toronto that it would do no violence to the system if area municipalities were required to have wards. It would also appear that the system we propose could only work if the size of each area municipal council were required to be an even multiple of the number of Metropolitan wards found in the particular area municipality. Since boundaries would be in any event up to the

Municipal Board, it could easily be provided that area ward boundaries fit clearly into (or be identical with) Metropolitan wards. It would seem most appropriate if the area municipality was the proposer of the boundaries of both the Metropolitan and area wards within each area municipality.

While we prefer to leave the decision on how many representatives should come from each ward to the local council, we must express our distaste for the two member ward. All of the federal two member constituencies have now been eliminated, although a few remain in some provincial systems. If the province wishes to deal with the matter itself, then we favour it legislating a system of one representative from each ward.

The system we propose could give rise to some useful internal reforms in the area municipalities. For example, it would be wise to excuse Metropolitan representatives from the responsibility of sitting on area municipality committees. They would be expected to devote most of their time to Metropolitan Toronto, and it would be best if their office and secretarial help was at the Metropolitan headquarters. They would be full voting members of their area councils, but would work primarily at Metro. Area municipal representatives would of course work primarily at the area level.

If this kind of system were to be adopted, it would be important to make a number of legislative changes so that true specialization could be achieved without diminishing the status of local representatives. For example, the present system of remuneration results in a full-time local representative being paid far less than his Metropolitan counterpart. Municipalities should have the power to correct this disparity.

There remains to consider the issue of the role of the local executive on the Metropolitan Council. We have already stated that there would be much merit in encouraging, or indeed requiring, the area municipalities to adopt executive committee arrangements. Controllers, elected at large as they are, will wish to represent their municipality at Metro and on the Metropolitan executive. The system we propose could be modified to accommodate that wish, providing a smaller number of Metropolitan wards in municipalities with controllers and providing that the controllers sit on the Metropolitan council. However, the system would be less than ideal. The Metropolitan wards would become very large. The phenomenon of the over-worked controller, representing everyone at every possible level, would continue.

We would prefer as we have already stated to see the office of controller eliminated and the functions of a Board of Control performed by an Executive Committee. If that were done, the next question would be whether both area municipal and Metropolitan representatives would be eligible to sit on such a committee.

The argument for restricting membership to area representatives is that, in that way, there would be no danger of the talents of executive committee members being spread too thinly. However, denying Metropolitan representatives the opportunity of being executive committee members would appear to restrict the healthy

exchange between councils mentioned above. We suggest that both be eligible for appointment to area municipality executive committees. We hope that local councils will tend to appoint some of each.

The Metropolitan Executive

Political administration is presently complicated at the level of Metropolitan Toronto by the fact that all members of the Metropolitan Council owe their election to an indirect political process. Most members sit on Metropolitan Council because they have been elected to some other office, such as that of mayor or controller. A few are chosen by their councils. The Metropolitan Chairman is chosen by the council, and while the Chairman's job description makes him sound very much like a chief administrative officer, and the council is permitted to choose persons with other than a political background, the job has in fact developed into something akin to that of a mayor, and the council has always filled vacancies from among its numbers.

The Metropolitan Executive Committee is now larger than some of the area municipal councils. Whatever it may be, it appears too large to be properly described as an executive body.

We suggest that the Metropolitan Executive Committee be composed of the Chairman and four Metropolitan representatives who are not members of area municipality executive committees. That qualification will mean that the Committee will be in some ways a less important political body. Its concerns will be executive matters - staff and budget. Mayors will not be burdened by sitting upon it. It will not function as a mini-council. If there is a need for a more political forum within Metro, the Chairman, or anyone else, can always convene a meeting of mayors or indeed of any other grouping of people. Our recommendation would, in our view, increase the number of full-time Metropolitan politicians from one to five, and that would be healthy.

We do not believe that it would be wise to specify the representation on the Metropolitan Executive Committee in such a way as to require certain area municipalities to be represented by certain numbers. That is impossible to do if one wishes an efficient committee. It is unnecessary if the functions are largely executive functions. It is undesirable if one wishes to see Metropolitan Council actually deal with Metropolitan issues rather than area municipal issues in disguise.

The Chairman of the Metropolitan Council should, in our opinion, be at all times an elected member of the council. This would respond to the present criticism regarding the appointment of the Chairman and becomes possible if our other suggestions are followed. The Chairman would seek election as a Metropolitan representative and would be chosen to act as Chairman by his colleagues. Just as we suggested above that mayors might be chosen by a council and be responsible to it, so should the Chairman, and he should be capable of being replaced if he loses

the confidence of the council. Once again, where there is not to be recourse to elections except at specified intervals, the procedures for replacing a Chairman in mid-term would have to be sufficiently elaborate to prevent a Chairman elected by a narrow margin being removed by a "fluke" vote. A requirement of two weeks notice of a motion naming a new Chairman, and a requirement that any motion appointing a Chairman carry by a majority of all members of council (not merely those present and voting) would appear to be adequate protection.

Conclusion

The method of selecting a Chairman outlined above is in complete accord with all of our parliamentary traditions, and it has not been unknown in our local government traditions.

It would, as noted above, be entirely possible to elect mayors of the area municipalities in the same way. This is the case, as well, with the executive bodies at both levels. In our view such a method of election would be a very considerable improvement over the system now followed.

At present, there is no guarantee that the mayor will have the support of council. He ought to be an able Chairman and a capable administrator, neither of which are qualities the public is likely to know much about when they elect him. Besides being those things, he ought to be a person able to speak with some authority for his municipality. At present, he can only do that if he has managed to build a coalition of council supporters behind him, and he generally cannot start doing that until after his election. He must take part in a ruinously expensive election campaign after which he has no authority within his council and no real power to do anything. The system of electing a mayor at large has been in part copied from American systems that do give mayors substantial power and has in part grown from the days when there was no municipal civil service and the mayor was indeed the chief executive. It is an outmoded system and it should be discontinued.

There are two substantial arguments against making the change. In the first place, it is a major change which the public will notice and may very well not understand. The public is used to voting for a mayor. If people ask "Who is running for mayor? Where do I find my ballot to vote for the mayor?" and are told that they no longer can vote for the mayor, the instant reaction will be one of outrage. We think that most fair-minded, well-informed people with some understanding of the political process would support the change, but we acknowledge that during the first election under the new system people would be unhappy. Governments do not like to do unpopular things unless very great public advantage flows from those things.

The second disadvantage, at least in some eyes, is that the system proposed would make almost inevitable the growth of at least informal political parties, and quite possibly formal parties. So long as councils were elected for a fixed term, and

the traditions of a professional civil service were maintained, the parties would not be as rigid as those found at other levels of Canadian government, but parties they would be. Parties develop when the political system requires them to develop, and this system would require them. We believe that if the system were adopted there would very quickly be formal candidates for mayor and Metropolitan Chairman, publicized as such and identified as being supported by particular candidates in the various wards.

We do not find the prospect of municipal parties an unattractive one. We believe that such a system would permit far better public debate and public action on urban issues. However, some people dislike the concept. The legislation governing the City of Winnipeg proposed having a mayor chosen by the council and then abandoned the experiment before it was even actually tried.

In the most perfectly functioning civic democracy possible,it would be up to each municipality to choose how its mayor should be elected. In deciding whether or not to permit municipalities to make that decision the provincial government must be aware that very few, if any, local governments would change the system by which the mayor is elected. Public dissatisfaction with such a system, transitory though it might be, would reach its peak in the three weeks before the first local election under the new system, and local politicians will know that. The public might well express its dissatisfaction by voting against those who introduced the system, the local politicians then running for re-election.

We are really forced to conclude that the system of a mayor chosen by the council from among its number is highly desirable but will not be introduced by any municipal council. If it is to be introduced it must be by way of provincial statute.

The system we have proposed would, in our view, permit the gradual development of cabinet responsibilities at the municipal level. Mayor and executive committee would be responsible to a majority of council. Ongoing responsibility for certain functions would begin being assigned to particular members of the council, not necessarily members of the executive committee but probably members of the majority that supported the executive committee. Eventually titles would be developed, just as the City of Amsterdam has an "Alderman for Public Works". If broader powers of delegation are granted to the municipalities, by-laws would begin being passed that gave certain authorities to the alderman or councillor for a particular field.

Introduction

In our first section we suggested that the governmental nature of municipal corporations in Ontario and therefore in Metropolitan Toronto can be characterized as administrative. The inability to delegate authority is a primary reflection of that nature as is the political structure of municipalities. The former ensures councils' detailed involvement in administration while both inhibit the development of policy at the local level. This view of the municipality as administrator has been in keeping with the historical view of municipalities in Ontario and with the view that politics should be kept out of municipal decision-making so that "good government" could occur at the local level through objective solutions to technical problems.

We now turn to examine the administrative role of municipalities in the context of provincial-municipal relations. Our desire here is to understand the provincial-municipal relationship and the impact it has on the administrative nature of local government. To do so we examine the financial relationship of municipalities in Metropolitan Toronto with the province and the jurisdictional relationship with respect to the provision of services and planning. Planning is singled out because of its importance at the local level.

Those relationships are ones of municipal subservience to the province. To a large extent, the municipalities are in reality administrators of the policies of the provincial government and its agencies. This situation arises for a number of reasons. The inadequacy of municipal revenues results in provincial conditional grants which means the imposition of provincial policies. The role of the Ontario Municipal Board in approving municipal capital expenditures results not only in delays in municipal activities while approval is sought, but also in the capacity for Municipal Board review of local policies. The provision of services at the local level indicates extensive areas where municipal authority is denied so that administration may occur through special purpose bodies. It also indicates that with respect to many services municipalities are the administrators of provincial policies because of provincial legislative controls. In planning, for example, the approval function of the O.M.B. results in provincial control of the policies of the local municipalities. Moreover, the whole relationship of the municipalities to the province, as a result of judicial interpretation, is one where in financing, servicing or planning the municipalities must have very specific statutory authorization before any action can be taken. The municipalities, like administrators, have little flexibility to respond to new or changing situations, and little jurisdictional scope to develop policy. The electorate, moreover, is faced with fragmented authority and an unclear idea of where decisions are made.

The Ontario Economic Council has stated in its Municipal Reforms: A Proposal for the Future that:

> Determination of goals and setting priorities is the politicians' job. The political process should be so organized that the electorate controls the formulation of goals and priorities ... Because most of the basic services provided by government relate to people in a regional community and because the individual is the most effective interpreter and most efficient manager of his personal resources, that community should be the basis of our political system. Some public services must, of course, by their very nature be provided on a national or provincial basis. But the bulk of public services provided to individuals and groups are best provided through the individual community.
>
> Local government should be the focal point of the political action - not an afterthought to be assigned a few local functions.[1]

We could not agree more and thus make suggestions for increasing the jurisdiction of municipalities in Metropolitan Toronto. We view the curtailment of the role of the Municipal Board with respect to financing and its elimination with respect to planning as an important part of achieving that goal. We see the granting of more general powers to the municipalities as another important aspect of this change. We see the generality of the division of powers in the British North America Act as an example of a method of granting more general powers to municipalities, and while we are by no means suggesting constitutional status for the municipalities of Metropolitan Toronto, we argue that many of the present provincial controls which are found both in the narrow drafting of legislation and in the promulgation of regulations are no longer necessary for Metropolitan Toronto. The need for minimum provincial standards and the protection of minority interests, we feel, can be accomplished by other means.

We emphasize in this part of our report a change in the jurisdiction of municipal governments in Metropolitan Toronto. Changing the governmental quality of those municipalities by allowing delegation and a different kind of structure is not enough to transform them into policy oriented bodies. With that change there must be broader jurisdiction over such matters as transportation, planning and social services.

It is only with all these changes that the municipalities will cease being primarily administrators of provincial policies and become real governments which initiate and develop their own policies - an appropriate role to give them in view of the cost, scope and complexity of governmental needs in a major urban centre such as Metropolitan Toronto.

CHAPTER III - FINANCE

Introduction

The ability of a municipal corporation to perform any of its functions is, of course, constrained by its ability to pay for those functions. Historically, municipalities paid for what they did by levying taxes on the real property situated within their boundaries. The system was based on the fact that the great bulk of municipal services were those directly related to land - the provision of roads, sewers, water and other utilities.[1] When public education was made an added burden on the municipal taxpayer, it could still be said that the system of local taxation was as fair and universal a one as was then known.

The introduction of personal and corporate taxes, and direct and indirect sales taxes, and their popularity with governments, occurred at the same time as did a demand for great increases in government spending. This occurred particularly after World War II, in the social services field.

The development of these tax fields entirely by-passed municipal government in Ontario, and to the extent that new services were required of local government, their financing came partly from the property tax but increasingly from either grants made by the province or through shared-cost programmes, administered locally but largely funded from the Consolidated Revenue Fund, a fund of money essentially generated from taxation systems more progressive than the property tax. In some cases jointly financed agencies were established, such as Children's Aid Societies, or existing local agencies, such as Boards of Education, were given provincial grants. In other fields, direct grants were given to municipalities, frequently based on a rigid cost-sharing formula. That is essentially the position today.

The last fifty years have been a period of urban expansion, both in population and in the complexity of infrastructure required to support urban populations. More and more capital has been required by local governments, and the provincial government has recognised the need to both ensure that a reasonable quantity of capital can be raised, and to ensure the general and ongoing solvency of municipalities. The danger of municipal insolvency had become apparent during the depression of the 1930's, and provincial action was clearly required. One response was an extension of powers for the Ontario Municipal Board, effectively establishing it as an agency to control the total amount of municipal borrowing and the terms of such borrowing. Another was a system of grants from the provincial government in a number of public works areas, such as road construction, and later, public transportation. A third was favourable interest rate loans for schools and libraries. Federal schemes designed to defray the public capital costs of new land development were also introduced.

Through it all ran the thread of the municipal right to real property taxes coupled with provincial control of municipal expenditure through two devices - the legislation restricting the powers of the municipality to very specific areas, and the general prohibition against spending commitments that could not be paid for

out of current taxes. Municipal contracts not to be paid for by the taxes levied by a particular council during its term of office require Municipal Board approval, and each municipality is required to strike a mill rate sufficient to pay for all current estimated expenditures, including payments on capital debts.

While the inability to engage in deficit financing is sometimes looked upon as being a significant constraint on freedom of municipal action, it is a system which observers of some American cities look upon with envy.

This is not an appropriate place to discuss all of the complexities of municipal finance, but it is useful to look at the features of municipal finance that constrain local freedom of action. We will use the usual municipal distinction between capital and current budgets.

Capital

The most obvious constraint on municipal capital spending, at present, is the requirement of Ontario Municipal Board approval. Section 64 of The Ontario Municipal Board Act provides that a municipality shall not authorize, proceed with, or provide money for "any undertaking, work, project, scheme, act, matter or thing" where the cost or any portion of the cost is to be raised in subsequent years or provided for by debentures "until the approval of the Board has been first obtained."

It is significant that under this section the Board is not required to merely approve the expenditure, it is required to approve of whatever is proposed to be done. The situation is somewhat complicated by a further restraint contained in section 293 of The Municipal Act whereby municipalities cannot incur debts without the consent of the electors, and by section 63 of The Ontario Municipal Board Act, under which this latter consent can be dispensed with.

Since the creation of the Municipality of Metropolitan Toronto, the requests of the area municipalities for capital funds have gone through the Metropolitan Council. The procedure is one where, first, each municipality adopts a capital budget, indicating the amounts it wishes to raise and the purpose for which it wishes to use the funds. The Municipality of Metropolitan Toronto Act does not require the Metropolitan Corporation to issue debentures for the area municipalities. What it does is permit Metropolitan Toronto to issue debentures, and prohibit the area municipalities from doing so. Assuming that Metropolitan Toronto Council approves of the proposals, the final list of projects and their costs is passed on to the Municipal Board, and each item is considered individually. The Municipal Board requires considerable detail on each project, and finally issues an order approving the issue of debentures for the purpose of the project. At that point it is proper for Metropolitan Toronto to issue debentures for the project.

Metropolitan Toronto actually creates and issues debentures for capital works three or four times each year, on the advice of its treasurer. Before creating debentures, the Metropolitan treasurer canvasses the treasurers of area municipalities to determine those approved projects for which funds are immediately required. Each of the area municipal projects is submitted to the Metropolitan Council for approval, and approval has historically been given as a matter of course. The total amount of debentures, and their terms, are then approved by the Metropolitan Council, a by-law creating them is passed, and the debentures are sold.

Several features of this system deserve comment. In the first place, it is a time-consuming system, and it has little capacity for permitting the necessary time to be spent in ways that will not impinge upon municipal programmes. A considerable portion of area municipality borrowings are required to finance public works, and it is frequently advantageous to let contracts for these works in the late winter, so that a start on construction can be made in the early spring. Application to the Municipal Board cannot be made until the council has approved of the project, and as a new council is elected every second year, taking office in January, it is usual for capital budgets to be approved in the month of February. Obtaining Municipal Board approval can take up to six months, with the result that approval to spend capital funds is sometimes not received until after the time in which they could be spent most advantageously has passed.

The provisions of The Ontario Municipal Board Act that require the Board to look into the desirability of capital projects can and does create both duplication of effort and a situation of constraint on municipal action that is probably not wholly desirable. The Board not only must be advised that capital funds are desired for sewers, it must also be told how big the sewers are, precisely where they are to be laid, and various other matters of a highly technical nature. From the point of view of the municipality, these details appear to be matters for which provincial controls are neither necessary nor desirable.

If a municipality is attempting to reconstruct its sewers over a lengthy period, it wishes to plan for certain total sewer expenditures each year leaving itself the flexibility to make variations in each year's programme priorities on the basis of changing circumstances, including such things as adjacent private construction and a consideration of the traffic disruption caused by other public works. Detailed working drawings for the sewers in question will generally be prepared shortly before the project goes to tender, and it may be that field inspections will suggest desirable modifications in the scope of the work. When this happens the project may have to be submitted once more to the Board and indeed to the council for approval, with resulting delays.

We are not certain that the difficulties caused by these procedures are fully appreciated. We therefore include as Appendix "A" two memoranda from Mr. N. Vardin, presently the City of Toronto Director of Public Works Planning and Programming, to his superior, the Commissioner of Public Works. The first deals

with the specific issue of the 1974 sidewalk reconstruction programme while the latter describes all of the department's programmes for the years 1971 to 1974, with certain specific recommendations for reform. Mr. Vardin's frustrations shine through his restrained use of language.

Recently the Municipal Board advised municipalities that, in view of provincial policies of spending restraint, recreational projects will be examined with special care, and a Metropolitan project for amateur track and field facilities was intitially rejected. The project in question was designed to replace facilities that were removed from amateur use by the considerable expenditures needed to expand the Canadian National Exhibition stadium. While it probably would have been desirable if both that cost and the new amateur facilities had been submitted to the Board at the same time that was not practical in view of the time spent on site selection for the amateur facilities. In any event, local councillors who supported an expansion of professional sport facilities only on the understanding that amateur facilities would also be expanded feel that the Board's action, had it not been reversed, would have had a decisive effect on municipal policy planning.

It is not clear that this Board action is at all desirable. If the Board is to be used as a tool for implementing short-term provincial economic planning goals, surely it ought to control totals, not projects.

Another issue is the inter-relationship between Board approvals and other sources of capital funding. Municipal requests for approval of capital projects will show the total cost of the project and the amounts intended to be raised from other sources, such as grants or forgivable loans from the provincial or federal government. Frequently, the grants or loans are not approved, or are not approved in the full amounts requested by the local government. The extent to which that will happen is not known at the time the Board considers capital projects. If the municipality could, at the time its capital budget was approved, have anticipated a reduction in provincial or federal grants, it would have prepared a different budget. It might, that year, have stressed projects for which no provincial funding was available, or it might have planned a programme of reduced scope with a higher municipal contribution. In the present circumstances, the municipality may labour for months obtaining approval for capital expenditures that it cannot make after they are approved.

We question the utility of much of this activity, although we recognize the benefits to municipal solvency that the Municipal Board has brought. It seems to us that the major advantages of the present system of review are:

(1) The total amount of a municipality's borrowing is reviewed annually and is controlled.

(2) Municipal borrowing is permitted only for capital expenditures.

(3) The term of each loan is for no longer period than the expected life of the project it is intended to finance.

Those benefits ought, in our view, to be retained, although we do not believe that only the present system can retain them. Ontario municipalities ought never to be in the position of some cities in the United States, which borrow money to finance current programmes. Indeed, some economists would argue that the same features ought to govern the borrowing of all Canadian governments.[2]

We have considered whether the private market is not able to control these matters sufficiently to permit the elimination of the Municipal Board functions, and we have concluded that it is not. Market analysis will control the rate of interest on borrowings, and will consider the ability of the borrowing municipality to meet all of its obligations. Purchasers of municipal obligations will not, however, be overly concerned about whether a particular borrowing meets the tests outlined above. If it is public policy to ensure that borrowing is only for capital projects (as we think it should be) then some form of control process will be required. We believe that the process could be considerably streamlined, and that at least some parts of it could be better performed by the audit function than the approval function.

We recommend that preliminary capital budgets be submitted to the Board in the year prior to the year when the money is to be spent, in sufficient time so that in the normal course they can be approved in the year in which they are submitted, and that such approval of a preliminary budget be sufficient authority for the capital spending shown in the preliminary budget.

We gave consideration to whether the purposes of a particular debenture issue should continue to be a matter for Board consideration. If the Board were to consider only the gross amount being asked for, and not concern itself at some point with the purposes, then it would be clear that the Board was concerned with financial solvency and was not involved in the merits of specific programmes. We consider that desirable yet we still wish the Board to enforce rules based on the desirable features outlined above.

Thus, there are difficulties with simply a system of block approvals. Most significant is that, without other features, the Board would then be performing only the function of a market analyst, and would be determining only the financial ability of the municipality to pay back the money borrowed. The relationship of the term of the borrowing to the life of the project and the requirement of borrowed funds being used only for capital purposes would not be considered. In our opinion, this matter could be controlled by strict statutory requirements, coupled with an audit.

It must be noted that municipal auditors are full-time employees of the Municipality of Metropolitan Toronto and the City of Toronto. While the reputation of the incumbents is beyond question, it might be unwise to create a situation where there could be a temptation on the part of municipalities to direct their auditors in the performance of their duties.

We recommend that the Board's function be defined as one of authorizing the total amount of annual municipal borrowing and of approving the annual municipal audit insofar as that audit related to certain statutory requirements for borrowing. Those requirements would be that borrowed funds be used only to pay for the costs of capital projects, and that the term of borrowings not exceed the reasonably estimated useful life of such projects. "Costs" ought not to be defined in such a way as to exclude the staff costs of municipal employees supervising a project or preparing detailed plans for it, or else a major consequence would be a complete reliance on outside consultants for such work.

The municipal auditor would have to certify the projects on which funds had been spent, their estimated useful life, the sums of money spent upon them, and relate those sums to the amounts actually borrowed. The Board would have to have a duty to approve those reports, and the right to review the material on which the auditor based his report. The sanction would be the Board's right to defer consideration of further borrowing until it had approved past audits. Borrowings should be reported to the Board when completed, and the Board would continue to certify to the fact that new issues had the Board's approval. In that way, solicitors could give opinions on the validity of issues as they do now.

These recommendations might appear to inhibit the freedom of action of a new council taking office in January of a particular year. That council would find itself with an approved capital budget which might not reflect the priorities of that council. However, we believe that the inhibition would be more apparent than real. The new council could direct its officials to spend no capital money until the council had reviewed the programme. On review, the council might, on any item, desire to spend more money, less money or the same amount of money. To the extent that the new council wished to spend less money or the same amount of money, it would be perfectly free to do so. To the extent that it wished to spend more, it could apply to the Board for a supplementary authorization, or inform the Board of a reallocation of the existing authorization. In those circumstances, it would be no further behind than a council is at present, and it would actually be further ahead, since presumably some spending on that heading of expenditure would have already been authorized, and could start at once.

As mentioned above, the Municipality of Metropolitan Toronto at present approves all area municipality capital projects. In practice, all such projects are approved. It has been felt by Metropolitan councillors, all representing area municipalities as they do, that review at the Metropolitan Council of specific area municipality capital projects would be an inappropriate

intrusion into local affairs. On the few occasions when a member of Metropolitan Council has called for debate on a particular area project, the majority view has been that such a debate was inappropriate. In fact the major Metropolitan control on area municipality capital expenditure appears to take place in informal discussions between officials of the two levels. We recommend that in future Metropolitan Toronto be required to raise such total amount of capital for each area municipality as the Metropolitan Council may determine. It is no more appropriate for Metropolitan Toronto to consider individual projects than it is for the Municipal Board to do so.

Over the past 20 years, the major user of capital funds has been the Metropolitan government. It is not at all clear that this situation will necessarily continue. Most of the land in Metropolitan Toronto has been developed, and the major expenditures for roads, trunk sewers and water supply will have been made by the early 1980's, when there is general agreement that Metropolitan capital programmes may be reduced.

On the other hand, projects do seem to be found that could expend available funds. Proposed standards for sewage treatment in the future suggest plant expansion and considerably increased operating expenses. As mentioned above, there seems to be some thought that the Metropolitan level of government should involve itself in financing recreational facilities that would serve the entire region, so that the new zoo may be a hint of things to come. The possibility of a Metropolitan City Hall has been discussed. It would appear that Metropolitan Toronto may be involved in treating and selling water to adjacent regional governments on an increasing scale.

Notwithstanding the foregoing, area municipalities may be coming to a point in time when their capital requirements can be expected to increase. The City of Toronto has proposed a major scheme to convert refuse into energy in the form of steam, with a considerable requirement for public works, both below and above ground. Many parts of the Boroughs are sufficiently old as to suggest that major utility renewal programmes may be in the offing. If the local parks system is to be expanded anywhere it must be done at very considerable expense. It appears likely that municipalities will be more involved, in the future, in providing social housing.

That there are areas for ongoing capital expenditure by both levels of local government is therefore clear. We have recommended a simplification of Municipal Board procedures to facilitate the approval of capital borrowing. It remains to consider the effect of provincial assistance on the municipalities of Metropolitan Toronto.

Municipalities in Metropolitan Toronto would have considerable difficulty sustaining the present level of capital spending unassisted. A withdrawal of capital assistance would leave the municipalities in serious difficulty.

It must be noted that the present system causes its own difficulties. One of those is the tendency of municipalities to spend on those programmes for which it can expect the highest capital contribution. The classic example of roads vs. transit, with the former attracting grants while the latter did not, has been gradually minimized, but other striking anomalies remain. Parkland in river valleys can be purchased with a 50% provincial contribution by conservation authorities, while land in other locations attracts no subsidy. The building of sanitary sewers and sewage treatment plants attracts federal subsidy but sewer separation projects, designed to forestall the need for new treatment facilities, are not eligible for subsidy. Municipalities may obtain significant funds for the repair of the banks of a brook running through a park, so long as the brook continues to be part of the storm sewer system. At the present time a municipality can borrow money at 8% to build family housing, but it must borrow at much higher rates if it wishes to upgrade the park that will serve the families housed. These are but a few examples of situations where provincial and, to a lesser extent, federal programmes induce municipalities to spend in ways that may not be an accurate reflection of municipal priorities.

A second issue which, like that of priority-setting, will arise again when we consider grants for current programmes, is the time spent on the audit function. We suggest above that the Municipal Board ought to review certain aspects of the municipal audit, and we considered whether that could replace the elaborate audits now performed by the various provincial ministries that make capital grants. We were forced to reply in the negative. When grants are given, whether for capital or current programmes, the ministry or agency making the grant must eventually satisfy itself that the money given was actually spent on things within the programme limits for which grants are permitted.

The Metropolitan Department of Social Services spends a great deal of money on programmes the costs of which are shared by other governments. The Commissioner of Social Services estimated that perhaps as many as 100 employees were essentially engaged in creating and preserving data sufficient to satisfy provincial and federal audit requirements, beyond the financial reporting requirements of the Metropolitan Government. That is an example of current rather than capital spending, and it is probably an extreme example, but it may be taken as a useful look at the tip of an iceberg.

Literally hundreds, if not thousands, of municipal employees are diligently preserving pieces of paper which, years later, are examined by a further army of provincial and federal employees. It must be clear that systems of conditional grants, whether for capital or current programmes, carry with them a high administrative cost and distort local government priorities.

A final difficulty about the financing of capital works through provincial grants is that, in most cases, the municipality is given no right to the grant, and the legislation merely empowers a minister to make grants. The result is a situation where a

municipality can, relying on past performance, reasonably expect some amount of grant, but it cannot be certain of exactly how much. Sometimes the amount of grant can be determined before capital works are undertaken, but in other areas the final amount is frequently not known until after the contracts for all works have been let, and the ministry in question has considered all of the applications made to it and has determined the disposition of available funds.

From the point of view of the ministry dispensing money, elaborate review processes, generally incorporating allocation formulae of some sort, must be instituted to ensure that both fairness and wisdom are involved in allocating scarce resources to a multitude of projects. From the point of view of the recipient municipalities there is no real certainty to the process, and considerable amounts of time are lavished on persuading provincial officials and members of the Assembly, of the urgency and merit of specific projects.

The merits of the system of conditional grants should also be mentioned. In the first place, the system does permit the provincial government to exercise significant control over the total amount of municipal spending. It is important that overall control over public sector spending in Ontario be exercised somewhere, and municipal spending is a significant part of that total. If a fixed proportion of any or all categories of municipal capital spending were to be paid for by the provincial government, an Ontario Treasurer who wished to promote policies of restraint or expansion, depending on economic conditions, would be powerless to affect a substantial portion of spending. We assume that the Treasurer will wish to retain control, and that most persons would agree that he should have it.

Secondly, just as the municipalities may resent shared-cost programmes because of the influence these have on council spending priorities, the provincial government may welcome the influence its programmes exercise, and in some cases the influence may be wholly desirable. Take the issue of whether transportation needs should be met by private automobiles or public transit. Many aspects of that issue will have to be dealt with by the provincial government, in its policies concerning highways, commuter rail and gasoline taxes, to mention only three. Much of the impact of those policy decisions would be lost if municipalities provided such a low level of public transportation service that most suburban families had to maintain two cars. In the same way, a provincial commitment to improve water quality in the Great Lakes will depend on increased levels of municipal treatment. In order to achieve those levels, the provincial government may wish to use the carrot of grants quite as much as the stick of regulations.

To summarize, we presently have a system of provincial assistance to municipalities that distorts local priorities, attracts high administrative costs and is uncertain in its application. The system does, however, permit significant provincial control of the economy and permits legitimate provincial priorities to be reflected in municipal spending. Many of those features will be found, as well, in the present system relating to current or operating expenses, but in that area there will be some significantly

different features as well. After discussing those, we will consider methods of retaining desirable controls while eliminating some of the problems.

Current

The most significant difference between current and capital spending is the absence of a single provincial agency controlling the total amount of expenditure. The most significant similarity is the very considerable proportion of municipal spending that is financed through provincial grant programmes, many of which are in fact largely funded through related federal programmes such as the Canada Assistance Plan. In both areas detailed control of municipal activity abounds.

That part of municipal current revenue which comes from a mill rate levied on the assessment of real property has been roundly criticized for many years as being "regressive", by which it is meant that the burden of the tax does not fall upon citizens in proportion to their ability to pay it. The income and sales taxes have been frequently proposed as better ways of raising local tax money, at least by those who argue that taxes should be based on ability to pay.

Another significant feature of the municipal taxation system is that the revenues produced can only be increased as assessments increase or the rate of taxation is deliberately raised. Despite a series of provincial initiatives, including assumption of the assessment function, no very satisfactory way of equating current assessment with current value for all parcels of land has yet been implemented. Rates of taxation are set by municipal councils annually, and rates have generally had to be increased. Whenever that is done the members of the council have looked longingly at income and sales taxes, where a period of inflation will produce more revenue with no adjustment in rates.

The system is a largely inflexible one. Municipalities are sometimes asked to essentially assist a particular group of people to do something for themselves. In that sense of inflexibility it is difficult for a municipality to bestow a benefit upon particular taxpayers, and tax those benefited accordingly. There are some exceptions to that statement. The Local Improvement Act was at one time widely used to provide public works improvements to particular locations, but it has fallen into general disuse in Metropolitan Toronto since the advent of subdivision agreements, sewerage imposts and other levies as methods of prepaying services. At the present time those parts of Metropolitan Toronto which are most in need of services traditionally provided as local improvements tend to be inhabited by lower-income people, and councils have often serviced those areas out of general tax revenues in order to effect a small measure of income redistribution. In 1975 the Borough of Etobicoke obtained special legislation permitting it to assume all of the then outstanding indebtedness for local improvements as a charge on the general taxpayers.

The City of Toronto, using powers under The Municipal Act has established business improvement areas, whereby those assessed commercially can tax themselves a sum in addition to the general rate for the purpose of improved or additional services(planting, parking lots, Christmas decorations) and for promotion of a retail area. Provision for additional parks acquisition has recently been added by private legislation. However, the inflexibility of the municipal taxing power is illustrated by the Metropolitan decision not to construct a Convention Centre at the present time. Such a centre was felt to be primarily a benefit to the tourist and convention industry, and no method could be found by which the costs of the centre could be recovered from that industry as distinct from the general taxpayer. The question of how the old age pensioner, having trouble maintaining his or her home, was to be benefited by such a centre, was clearly of concern to the Metropolitan Council.

We do not suggest that this should be a common aim of taxation, but it does arise at the local level occasionally. By far the greatest inflexibility is the municipality's inability to gear its taxes to the ability to pay and this has become a particularly severe problem as the costs of social service programmes have risen.

Some of the difficulties of financing municipal services from property tax have been addressed, in the past, by tax credits and by specific programmes of shared-cost assistance from the provincial government. To the very considerable extent that those programmes are supported by taxation revenue derived from more flexible and more progressive taxation, the burden of the property tax has been reduced.

However, that approach has grown to such a point that a very considerable number of disadvantages have become apparent. The basic principal of accountability of the taxing government to the electorate has been undermined. All of the problems mentioned under the discussion of capital spending and relating to municipalities setting their priorities are found here.

While most of the shared-cost programmes available to Metropolitan Toronto municipalities are also available to other parts of Ontario, all Ontario citizens contribute to one Consolidated Revenue Fund. Rural taxpayers feel that they are financing lavish spending in Toronto. Toronto taxpayers think they are financing the rest of the province. The decision to spend is taken, in many cases, by a local council which is responsible for raising only a proportion of the money, the rest flowing more or less automatically from provincial coffers.

No taxpayer has any very clear idea of whether the taxes levied on him are being spent for the benefit of his community or not, nor is he clear about exactly who has taxed him. Thus a Metropolitan Toronto decision to provide certain social services may result in increased revenues having to be generated through the province. That decision may be one which will appear to cost the Metropolitan property taxpayer very little, and, if the service is a costly one not generally favoured by the public, the local politician may escape his constituents revenging themselves upon him at the polls.

None of the foregoing suggests that Metropolitan Toronto taxpayers ought not to contribute tax money for the well-being of more remote communities, from which Toronto draws its wealth. However, the present system does not permit easy identification of the extent to which that happens, nor does it in every case even ensure that poorer communities will be benefitted. Many programmes are discretionary for a municipality and require some contribution by the municipality in order to generate provincial funds. Some poorer communities cannot afford to pay "their" share and the social service in question is therefore not available to those inhabitants.

Unconditional Grants

It has been argued that much would be achieved if the province would contribute increasing proportions of its funds by way of unconditional grants, moneys to be paid to municipalities that could then be spent on any permitted municipal activity. Such a system would, it is argued, avoid the expense and duplication of multiple audits, and would let the municipality adopt its own priorities.

We agree with this view but we are concerned that such a system may have other problems. The total amount of the unconditional grant would either have to be based on formulae or on ministerial discretion, and it will be most difficult to devise formulae that will be generally accepted as fair. To the extent that discretion is involved, municipalities will have no ability to plan for future revenues. To the extent fixed formulae are used, the province will have committed itself to open-ended programmes where circumstances beyond its control may force it to increase provincial taxes or incur deficits. We believe formulae can be used to divide a sum of money, but not to fix a total amount. Ontario at one time "committed" itself to passing on to municipalities amounts in proportion to increases in provincial tax revenues. A program of economic restraint left the commitment in tatters.

It is much easier for a minister or a cabinet to place limits, perhaps arbitrary limits, on the amount of block, unconditional grants going to municipalities than it is to limit the funds under a specific shared-cost programme. It can be demonstrated that municipalities have only managed to maintain their responsibility for delivering certain services, and their ability to pay for them, by discussing the actual costs and actual needs for very specific programmes with provincial officials until specific shared-cost programmes have, one by one, been introduced. In many cases the pattern has been one of a municipally initiated, small scale demonstration followed by various stages of negotiation with the province.

If block, unconditional grants had been introduced instead of all of those programmes, then some programmes would not be in existence today. Municipalities have constantly required increased levels of provincial financial support, and they may in the future. As one Metropolitan official put it "you get more money from Queen's Park with a rifle than a shotgun".

A system of unconditional grants, furthermore, would do nothing to restore a situation of spending being done by the same representatives as those who had to levy the taxes, and being responsible to an electorate that paid those taxes.

Other Revenue Sources

This study is not the place to make detailed recommendations concerning a revised system of municipal taxation. We support a system whereby other sources of revenue are made available to municipalities. We have in mind in particular income and sales taxes. The details of such a system are, however, beyond the scope of this study and are dealt with in Public Finance in Metropolitan Toronto, H. M. Kitchen (The Royal Commission on Metropolitan Toronto, Toronto 1977.)

Allocation of Taxes

It remains to discuss the responsibility for levying taxes that should be assigned to the area municipalities, on the one hand, and to the Metropolitan Corporation, on the other. At the present time, all of the property taxes are actually levied by the area municipalities, but besides collecting a local levy for local purposes, they also collect a Metropolitan levy and a school board levy and then remit the funds to Metropolitan Toronto and the school boards.

If sales or income tax revenue were to become available, it would appear simpler for this to flow to the Metropolitan Corporation than to the area municipalities. However, such a decision would have to depend on the allocation of powers, between the area and Metropolitan corporations. Some proposals have been made for a transfer of the administration of social services to the area municipalities. If those proposals were to be implemented, then it is clear that area municipalities would need more money.

Even if the present division of powers continues, it would be difficult to assign all new revenues to one or the other level of local government. As has been mentioned elsewhere, any expansion of the local parks system will be very costly, particularly in the most intensively developed parts of Metropolitan Toronto. While local municipal initiative in assisted housing is apparently being encouraged, not all Metropolitan Toronto area municipalities have shown the same interest in accepting more assisted housing, sometimes for apparently good reasons.

No solution would be entirely satisfactory. A start could be achieved by automatically allocating the basic levy (the one designed to compensate for present shared-cost programmes) in the same fashion as the money from the present programmes is spent. However, any initial allocation will have to be adjusted over time, and the system will not be workable unless it carries with it the mechanism for making those re-adjustments.

Proposals have been made to the Royal Commission on Metropolitan Toronto that would result in the Metropolitan Council being given the power to approve or authorize the level of area municipality and educational taxation. Those proposals generally discuss the present tax, which consists of a mill rate levied on an assessment of real property, but the basic issue remains the same with the property tax or any other tax. How can Metropolitan Toronto guarantee that it will deal fairly with each of the area municipalities?

The same problem is faced by other governments. Equalization grants are at least based on a statutory formula and on generally respected statistics, but provinces have been known to complain bitterly that they were not being allocated a "fair" share of C.M.H.C. capital funds. Toronto's feelings concerning federal moneys spent here as opposed to federal spending in Montreal are well known. Given the present climate of discontent between the City of Toronto and the larger Boroughs over issues such as expressway construction and assisted housing, the City might expect to see itself beggared in any allocation or approval process devised by the Metropolitan corporation.

Ideally, taxation revenues ought to be allocated on the basis of need. However, a basic "needs" formula which distributed progressively taxed dollars and permitted the area municipalities to continue to set their own mill rates for property taxation ought to do rough justice. The roughness of the justice would, over time, become apparent in the differential between mill rates imposed by area municipalities. Given a commitment for provincial review of the needs formula at five year intervals, that might be the most satisfactory solution. The "needs" formula devised should, of course, consider population and assessment along with historical service levels.

Such a formula has been used for the distribution of unconditional grants in Great Britain. Schedule 1 to The Local Government Act of 1966 sets out the formula, and it considers, inter alia, the numbers of persons in different age groupings, concentrations of high densities of population, the number of miles of road per 1000 population and unusual changes in the rate of growth.

We therefore recommend that the distribution of additional tax revenues between the Metropolitan government on the one hand and the area municipalities on the other be determined by formula.

CHAPTER IV - SERVICES

Introduction

The purpose of this chapter of our report is to examine the role of municipalities in Metropolitan Toronto in determining policies with respect to the provision of services. The Chapter will take a necessarily broad view of "services" as the term itself is very difficult to define. It will consider, therefore, benefits conferred upon individuals by the provincial and municipal governments in the context of the municipality or community. This approach is taken to remove a consideration of such items as provincial parks or appeal courts which are benefits but not in the municipal or community context, while including such matters as general welfare assistance and day care centres.[1] Moreover, in this discussion is included regulation or licencing by the provincial and municipal governments. This is indicated because in many ways it is very difficult to separate regulation from service. The regulation of minimum housing standards and their enforcement for example may be viewed as a service, as may the municipal regulation of the taxi industry. Moreover, licensing may also be viewed as a "service" in that it involves the controlling of privately delivered services.

It is clear that the ability to provide services and make regulations regarding the provision of private services is the very essence of government. Concerns with respect to financial resources are only important in the context of municipal needs to perform functions in service delivery. The issue of delegation discussed earlier can only be important, moreover, in the context of relatively wide powers to decide what services are to be delivered and the method by which delivery is to occur. The ability to delegate in order to enhance policy formulation at the municipal level is of little use, if policy is essentially already formulated with respect to the particular service; the ability to raise funds easily from a wide tax base is also of little value if policy formulation is restricted and controlled by the province; indeed, the ability to govern is of decreasing value to the extent that such ability is narrowed by policies and decisions already made. It is important therefore to analyze the present division of authority between the province and municipalities in Metropolitan Toronto to ascertain where jurisdiction rests with respect to the making of policy.

It would seem possible to view the municipal-provincial relationship with respect to the delivery of services from the perspective of three different models. One model would see the municipality as a policy and priority setter in its own right. Such an approach would be akin to that found in some American states where municipalities are given wide areas of jurisdiction carved out by state constitutions. Within those areas they are supreme and are viewed as legislative bodies responsible for the decisions within their sphere of power. A second model would seem to be at the opposite extreme from the first. The municipality can be viewed as essentially an administrative arm of the province with little "legislative" power in the sense of developing and instituting policies on its own. With such a model policy decisions would be made at the provincial level through

provincial acts and regulations with little scope for policy initiative at the municipal level. Such an approach would also divide off areas of jurisdiction from municipal councils and place them with special purpose bodies. The municipality in exercising its legislative powers under such an approach would essentially be exercising administrative powers, i.e. powers which were severely limited by the superior legislation already enacted at the provincial level, and would be exercising power only over certain limited areas as other areas would be granted to other bodies.

If the two possibilities suggested above can be viewed as being at the two opposite ends of a spectrum where wide powers of policy formulation are found in the first model and very limited powers in the second, the third approach would appear to be one somewhere in the middle. Such an approach would seem to suggest the possibility for a fair degree of latitude with respect to municipal authority for making policy for service delivery and regulation, while ensuring that the senior level of government also has an input into the process either by the establishment of minimum standards, the ability to intervene in restricted situations if it were felt necessary, or restricting the wide municipal policy role in certain areas of jurisdiction.

Which model is chosen is in a large part a function of one's subjective views of local government. Those who feel Metropolitan Toronto and its constituent municipalities are mature, sophisticated governments with large populations, which even in the area municipalities exceed those of some provinces, would argue that little provincial control is needed or desired.

Others have different concerns. While it must be admitted that local responsibility and responsiveness is desirable and indeed democratic, there are other values which are important. The use of detailed provincial regulation, or regulation by special purpose bodies, will, it is suggested, ensure "non-political" decision-making in matters such as police, child welfare, or education. There will be more objective expertise brought to bear on the delivery of such services. The Task Force on Policing in Ontario for example, albeit with little to back up the statement, stated that municipal police commissions were desirable for this reason, and, although the Provincial Legislature did not really deal with the issue of the desirability of Children's Aid Societies when it passed a new Child Welfare Act in 1965 (See: The Legislative Debates 27th Legislature, 3rd. Session 1965), it would be possible to argue as well that children would be taken out of politics. Moreover, the whole thrust of municipal reform in the twentieth century has been one to objectify decision-making in the municipal arena through the use of boards, commissions, and specifically skilled officers.

It would seem clear that such a rationale for public decision-making is spurious, to say the least. Virtually all governmental decisions are value decisions, even within a framework limited by provincial controls, and the essence of democratic government is the political resolution of value decisions. Decisions to repair roads instead of building parks are political,

not objective, decisions. The purchase and running of a theatre instead of an additional community centre is a political choice. It would seem then that at least this traditional rationale for provincial control is not as potent as might be thought. Nor is the notion that municipalities do not have expert advice in the making of those political decisions. The municipalities in Metropolitan Toronto clearly have, or are able to establish, strong administrative departments.

This is not to say however that there is no rationale for provincial involvement. Clearly it can be argued that provincial controls are needed in some areas, if not to maintain uniform standards then at least to ensure minimum standards. There would seem to be a strong argument that all citizens of the province are entitled to the same minimum welfare benefits for example, and that no municipal government should be able to reduce them. It may be argued that in order to share a common culture and to create functional citizens, education should have certain basic standards. In addition, it may be strongly urged that provincial control, direct or through special purpose bodies, not only provides another check on a level of government, albeit the municipal level, but also provides a certain amount of protection for minority rights. Again if one views education, welfare, or child protection as necessary services for the benefit of particular interest groups which the majority of the community might easily decide to reduce, it would seem desirable to make such a decision a difficult one to implement in order to protect those minorities from the majority whose only concern might be roads, or garbage and sewage collection.

In short, provincial control and regulation can provide for checks and balances within the governmental system, and ensure that there will be reasonable compromises and trade-offs by increasing the power of some groups. This is also the case, it may be suggested, with conditional grants, discussed elsewhere, as such grants may encourage activities or services which the majority might not otherwise espouse.

The two sides of the issue have thus been laid out. As suggested earlier it is difficult to totally accept one approach or the other. A high degree of provincial control is undesirable in that it conflicts with the goal of self-determination. Although it provides stability and certain protections, those benefits may be less needed and desirable in a centre such as Metropolitan Toronto which has a large population, two levels of government, and established expertise. Complete municipal autonomy, it would also seem, is undesirable. One need only point to New York City and other American examples of financial chaos and corruption which senior levels of government were unable to prevent, in part, because of guaranteed autonomy.

The Present Administrative Structure

If the middle approach is the one to be taken then, with an attempt to balance a judicious mix of municipal independence with clear and appropriate provincial controls, how does the present situation in Metropolitan Toronto compare to that ideal? If we pride ourselves on a municipal system unlike that of the Americans,

have we in fact gone too far along the spectrum referred to earlier? It would appear that the system of government in Metropolitan Toronto is in fact very much towards that end of the spectrum where the province is in complete control.

A Study of Statutory Powers to Provide Community Services,[2] lists statutory enactments which govern the provision of community services in the City of Toronto. That list includes legislation which empowers the federal government, the province, Metropolitan Toronto and the City to provide services and divides those services into different subject headings. The City is perhaps the best example of an area municipality for the purposes of analyzing provincial-municipal powers because it would probably have the broadest powers of any of the area municipalities as it has the most extensive special legislation,and is the oldest and in some ways the most important area municipality.

There are 131 matters listed in that study which govern only the delivery of services by the province and the two municipalities. It should be noted that in some cases an item listed is merely a section of an act as in the case of The Municipal Act, while in others an entire act governing a service may be referred to. This was done in an attempt to list service areas and evaluate control over those service areas; in some situations an entire act will govern the delivery of a service; in others, a section will perform that function.

For the purpose of this report each legislative enactment governing a service area was placed in a category in order to determine where authority ultimately lay for the delivery of a particular service.* The categories were as follows:

(a) those services for which the province sets the standards and administers or delivers the service;

(b) those services for which the province sets the standards and has some organization or special purpose body other than the municipalities delivering and administering services;

(c) those services for which the province sets the standards or approves municipal standards and provides for municipal administration or delivery and,

(d) those services for which the municipality sets standards and provides for municipal delivery and administration.

* See Appendix B

It is clear that those items listed in categories (a) and (b) will have virtually no potential for municipal input while those items listed in category (d) will have the most. Those services listed as being in category (c) will have some potential for municipal policy input but that potential will be limited in accordance with the details of provincial regulation. Even though there is always some discretion and some policy input into administration, as has been mentioned earlier in this study, they become less meaningful and less important as regulations and controls limit discretion.

The results of the analysis of services in these four categories indicate that the relationship between the province and the municipalities in Metropolitan Toronto is one in which the province oversees or controls virtually all major services. Of the 131 matters listed, only 30 could be exclusively assigned to the municipal level under category (d). This amounts to approximately one-fifth of the total number of services. While approximately 38 could be allocated to special bodies responsible to the province in some way (category (b)), approximately 33 indicated administration by the municipalities under provincial supervision (category (c)).*

If one examines the areas where there is the greatest potential for municipal policy-making (those items allocated to category (d)), it could be argued that many of these were relatively unimportant: removing ice and snow free of charge, regulating heat in residential premises, providing for rodent control, dog licencing, and controlling nuisances such as noise. There are some areas of comparatively greater importance such as general licencing, the provision of parks, sewers, water supply, and the regulating of sidewalks and certain highways, although the regulating of highways by the establishment of speed zones requires provincial approval and sewers may come under extensive provincial control. It should be noted, however, that even with some of these matters there is clearly provincial involvement because of the need for O.M.B. capital approval as discussed in Chapter III, and general provincial regulations respecting environmental matters. Items such as parks and sewers could be therefore designated in both (c) and (d) categories.

When viewed as a totality, therefore, there seems to be a clear indication that municipal government is at that end of the spectrum described earlier, where there is close supervision of municipal activity. It is not surprising, therefore, that municipal councils are actively involved largely in the consideration of administrative detail. In approximately one half of legislative enactments governing the provision of services in which municipalities are involved, it is the province which sets the standards and provides the policy framework within which the municipalities are to operate. In addition, in many areas, even though there is direct municipal involvement this is circumscribed not only by the requirement of municipal special purpose bodies, such as library boards and the Toronto Transit Commission, but

* See Appendix B

also by conditional financing provided by the province. The pattern we have seen therefore is one where municipal councils are limited in many ways by provincial controls and restrictions in the delivery of services. There is perhaps one major exception to this and that is with respect to the licencing of businesses. Policy with respect to this is generally prescribed by Metropolitan Council by by-law and administered by the Metropolitan Toronto Licencing Commission with virtually no interference from the province.[3]

It can be seen, moreover, that major areas of service are completely removed from the authority of municipal councils. As was mentioned, direct control by the municipalities is found only in certain matters - many of which are minor. Other important matters are administered geographically on a municipal basis but not by municipal councils. The most obvious examples are, of course, child welfare services, police services and educational services. In the case of the Children's Aid Societies, and the police commission, there is municipal input provided by a minority of the members being appointed by the Metropolitan Council, but the school boards are entirely separate.

This segregation of jurisdiction completes the pattern of restricting municipal policy control over the provision of services. The limitations on municipal input as seen from the analysis of statutory powers include the making of policy decisions by the provincial bureaucracy, the delegation of authority to special purpose bodies with or without some municipal input and with or without provincial control. The other major limitation discussed is the delegation of restricted and largely administrative authority to municipalities by the province with major policy decisions being made at the provincial level as with general welfare assistance, day care centres, and home-makers and nursing services. In these situations the municipal contribution is largely where the service should be, and not its quality, its form, or its desirability. Finally, there are areas of apparent municipal independence such as parks, sewers and waterworks, although even here there is provincial control because of the need for financial aid and approvals. The result is thus one of the municipality being to a large extent an administrative arm of the province.

A survey of municipal by-laws confirms this pattern. In the area of health care there is little municipal legislation passed[4] because there is little authority for municipal action. Of course,the same occurs with respect to education where municipal action is restricted to agreements respecting the sharing of school facilities. With respect to social welfare services, some examples of municipal input arise, but again the by-laws and reports do not provide examples of major policy initiatives even though they clearly indicate the exercise of municipal discretion. Metropolitan Council minutes, for example indicate the adoption of a report to provide for cash supplements for the working poor. The provision of such supplements had, however, first to be approved and provided for by the province. We are informed that considerable effort is often expended by the

municipality in obtaining such approvals. Once again, the municipal action is required to be within the financial guidelines and the precise regulations of provincial enactments. Interestingly enough, the areas of most independence, sewer and waterworks construction, indicate the same precise provincial control over design, financing and construction of the services.

It would seem, therefore, that the areas of municipal responsibility which have traditionally been under municipal jurisdiction - parks, water and sewage - remain so, and the traditional view of those items as not being policy matters are also reinforced by municipal action, although these matters are also considered in a policy context in planning deliberations and in official plans. With respect to matters that have been added to the traditional role of municipalities - social and recreational services in particular - this traditional administrative approach has been continued in part because of the manner in which authority over broad policy matters is maintained at the provincial level.

Given the relationship between the province and the municipalities of Metropolitan Toronto it is appropriate to examine ways to alter that relationship and to move it more towards the centre of the spectrum described earlier. In order to do so it is necessary, however, to first examine in some detail the historical and legal relationship between the province and the municipalities in order to ascertain appropriate methods for changing that relationship.

The Present Legal Structure

It is clear that the municipalities in Metropolitan Toronto have no status of their own, no inherent jurisdiction, indeed no existence except by virtue of provincial legislation. There were no representatives of municipalities present when the Fathers of Confederation met to formulate the provisions of the British North America Act. Indeed, the only reference in that Act to municipalities is to place them under provincial jurisdiction.

The municipalities of Metropolitan Toronto are historically, legally, and constitutionally inferior bodies to the province. There can be no constitutional guarantees for municipal "home rule" as found in the United States unless of course an amendment to the British North America Act can be contemplated. The municipality in Ontario is "wholly a creature of the legislature, it has no abstract rights - it derives all powers from statute ..."[5]

As a result of this inferior position the courts have traditionally interpreted statutes respecting grants of powers to municipalities narrowly. This approach may be summed up in Dillon's rule which states that a municipality may only exercise those powers expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute, and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation.[6]

The result of this approach is that if a statute does not confer power upon a municipality explicitly, the power cannot be exercised. Moreover, the general grant of power to municipalities found in The Municipal Act which states that "every council may pass such by-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for in [the] Act as may be deemed expedient and not contrary to the law" has been generally viewed as granting very little power at all. Indeed the Court in the leading case on this matter, Morrison v. Kingston [1937] 4 D.L.R. 740, stated that very few subjects falling within the ambit of local government are left to the general provisions of this section. Moreover, the Court went on to say that matters of "health" are generally dealt with by provincial legislation affecting health and that "morality" is generally dealt with in the Criminal Code so that such topics are entirely removed from the sphere of legislation of municipal councils. In addition, the Court continued that the power to legislate for the "welfare" of the inhabitants is too vague and general to admit definition and may mean so much that it probably means very little. It cannot include powers that are otherwise specifically given, nor can it be taken to confer unlimited and unrestrained power.

In keeping with such an approach to municipal jurisdiction, provincial legislation which enabled a municipality to produce, manufacture, use and supply electricity did not enable the municipality to purchase electricity in order to use and supply it.[7] Similarly, authority to regulate noises did not enable a municipality in the Courts' eyes to prohibit noises between certain hours,[8] while the Courts have also stated that municipalities cannot pass legislation which is in conflict with provincial policies found in provincial legislation.[9]

In short, municipalities have very little authority from a legal point of view to initiate policies or to act independently of the provincial government. Specific authority must be found in enabling legislation before any action can be taken. This approach to municipal authority contains within it many valuable attributes. In treating municipalities as inferior bodies not only is abuse of governmental authority checked by the narrow reading of legislative authorizations but also by the Courts' examining municipal action to see if it is reasonable, in good faith and for a public purpose.

In this way, however, the Courts treat municipalities not like elected governments but rather like administrative agencies. Indeed, in the eyes of the law the municipalities of Metropolitan Toronto are no different from the Liquor Licence Board, the Ontario Municipal Board, the Ontario Highway Transport Board or the Ontario Securities Commission. This means that in terms of policy initiative a municipality cannot act without provincial sanction. Policy initiatives cannot be undertaken to provide new services without authorizing legislation. For example, at the local municipal level legislation was requested by municipalities and granted by the province in the past for the funding of information centres, for the regulation of handcrafted wares for sale on sidewalks and to provide the free shovelling of snow for elderly

persons within the municipality. In terms of policy development the province thus examines the policy initiatives of municipalities and evaluates and approves them by the passing of legislation. A similar situation occurs of course at the Metropolitan level where an amendment to The Municipality of Metropolitan Toronto Act was required for the purchase and management of the O'Keefe Centre and for the provision of bus lanes on Metropolitan roads. Although it is clear that all governments and governmental agencies must have limits to their authority it is possible to deal with elected municipal governments, which have the power to tax and which are held directly responsible to the electorate, differently from the boards mentioned above so that they might be able, within a broader framework, to initiate and design services, and thus perform meaningful policy development and implementation.

Although these limitations still exist, at least one interviewee expressed some relief at two more general sections in The Municipal Act which give municipalities, firstly, broad power to grant moneys to whomever they desire and secondly, fairly broad power to regulate the placing of any objects on sidewalks. These two reforms are in keeping with the present provincial policy of broadening municipal authority, and while they hardly seem to go to the heart of creating a strong policy role for municipal governments, they do seem to suggest a method of creating broader parameters within which municipalities in Metropolitan Toronto might function. More general delegations of authority without detailed regulations or provincial approvals would be a useful approach.

Unless some change in this direction occurs, the present situation where municipalities on their own initiative are unable to adopt policies and provide services which have heretofore not been provided, will continue. Moreover, once provincial approval is given with its concomitant regulation and conditional funding, the ability of municipalities to readjust policies is frequently limited. The procedures for programs such as the enforcement of minimum housing standards, for example, are set out in such elaborate detail in special City of Toronto legislation that any change in administrative procedures seems to require amending legislation. The requirement of rigid adherence to provincial legislation creates not only the difficulty of constantly reporting to the provincial government but there is also a problem of policy being developed to ensure approval by the province rather than to ensure that local needs and priorities are met. Where authority for a program is found in private legislation, as is frequently the case, then the only provincial policy direction to be found may be that of the Private Bills Committee of the Legislature.

Alternatives

As a result of examining both the present division of legislative authority between the provincial and municipal governments and as a result of examining the common law and constitutional framework for that division, we have indicated the severe restrictions on municipalities with respect to policy development and

initiation in the servicing area. A change in these arrangements does not mean, nor did any of the persons interviewed suggest, a complete abdication of power by the province to the municipalities of Metropolitan Toronto. It is clear, however, that a number of steps can be taken to enhance the policy role of the municipalities. We have seen the methods by which municipal policy initiative is stifled by the present situation. They are, to summarize: the use of non-municipal special purpose bodies such as the Ontario Municipal Board and children's aid societies, the requirement of municipal special purpose bodies that are frequently less than fully accountable to the municipality, the use of conditional funding, the requirement of provincial approvals and the restriction of municipal powers by narrowly drafted legislation and detailed regulation.

Some of the methods to alleviate these restrictions are discussed elsewhere in this report. Conditional financing is dealt with in Chapter III and the need for provincial approvals in planning matters is discussed in the chapter on planning. The discussion which follows will deal with special purpose bodies and with the limited grants of power by the province to the municipalities.

We examined special purpose bodies in Chapter II. We will now consider how the role of special purpose bodies might be restricted in the context of providing services. A major difficulty with special purpose bodies is that they result in the segregation of important areas from council's consideration. They interfere with the financial planning of council because council is required to approve the estimates of the special purpose body such as those of the school board, or because council may have the estimates forced upon them by an appeal tribunal as in the case of the children's aid societies or the police commission. Even when the council has the right to grant or withhold funds, it may be sufficiently remote from the special purpose body as to hinder the council in its attempts to assess needs, priorities and possible extravagance.

We have also mentioned, however, the possible benefits of such bodies in the protection of minority interests. We feel that some role for such bodies may be desirable. However, it would seem appropriate to remove any legislative exigencies which require or result in the requirement that councils approve the estimates of such bodies. If we are to enhance council's policy role in major service areas such as child welfare, or police services, then municipal councils should be empowered to control spending in those areas.

Boards of education are a somewhat special case, since board members are elected by the same electors as the council, and the educational spending is shown on the tax bill as a separate levy. There is a case to be made for the control of educational spending by the council, but it is not the same case as in other areas, where the special purpose body is constituted otherwise than by election. It appears that no matter how carefully the tax bill is prepared, the electors hold the council responsible for its size. Since the same taxpayers pay for all local services, and the capacity of the taxpayers to pay must have

some limit, it appears anomalous that there is at present no democratic structure for resolving the priorities to be assigned to education, child welfare and public health, to take three popular areas of spending.[10]

If councils were not required to approve estimates, that would go a long way towards enhancing their role even if special bodies were maintained. It is also possible to enable councils to decide on the existence of many such agencies. Councils would be able then to maintain the agencies as they are, if this were desirable, or to provide for council appointment of such bodies, or to provide for council to assume the functions of those bodies entirely. Such an approach would enable municipal councils to decide for themselves how best to develop policy and deliver services in these areas. This authority to decide on the existence of special bodies should also apply to municipal special purpose bodies which are now required, such as library boards and the Toronto Transit Commission. Such a power does not, of course, adequately resolve the problem of minority protection as the municipality might, if it wished, remove the special body completely. Even if such an approach were taken without any further reforms then minority interest group protection would still be provided through the existence of provincial regulation which is extensive in the area of child welfare, police and education.

Our other suggestion for enhancing municipal policy-making in the delivery of services, however, is to widen the scope of municipal authority in order to enable municipalities to initiate entirely new services and to operate existing ones. This would involve, primarily, changes in legislation to enable municipalities to embark upon matters not specifically listed in existing legislation and to remove provincial regulation from a number of areas such as welfare, day care centres, building codes, as well as those matters presently under special purpose bodies. Much of this de-regulation would flow from the reduction of conditional grants. But the granting of authority in general areas, such as transportation, welfare and education would also be a useful approach to enhancing municipal policy-making. We saw in Chapter I that the municipal power to "regulate" is very strictly interpreted. The municipality requires a broad grant of power in general areas appropriate to local government.

There remains to be considered the problem of protecting certain groups that might suffer as a result of broader municipal powers. Some time ago the province moved to deconditionalize library grants throughout Ontario and this action pointed out the need for concern about minority protection at the provincial level. The feared result of the move was that councils in many rural municipalities would use moneys that would not be conditional for other purposes and that library service would suffer dramatically as only a few persons used those services in those communities. The province, it was suggested, had an obligation to provide certain basic library services to all parts of the province even if only a small group in fact benefited from the service.

There are perhaps two responses to that argument with respect to Metropolitan Toronto and its constituent municipalities. Firstly, given the size, sophistication and complexity of government in Metropolitan Toronto such problems are much less likely to occur. Although there can be no objective method of evaluating that view it is a valid observation given the number and strength of interest groups in the Metropolitan Municipality. Secondly, methods could be established in any reform of local government powers whereby the province could establish minimum standards for services if it so desired. One method to accomplish this, could be to provide for reserve power to be exercised by order-in-council establishing minimum standards for services. It would be anticipated that such authority would be used only sparingly and would exist for the express purpose of dealing with the minority problem.

This approach of jurisdictional reform along with the removal of special purpose bodies outlined above is perhaps the most extreme programme for enhancing municipal authority in Metropolitan Toronto. It envisages wide powers for municipalities to legislate with respect to services and an absence of provincial approvals or regulations governing those powers except in certain specific instances such as official plan approval. It envisages only a general power for provincial intervention to set minimum standards where this, in the cabinet's opinion, is necessary. This approach considers the likelihood of the need for provincial intervention as minimal and thus simply provides for this reserve power to control the problem in case a difficulty arises. Another approach that is perhaps less dramatic is simply to encourage the province to pass minimum regulations respecting those matters now governed by detailed provincial regulations and to enable municipalities to expand upon or clarify but not contradict those regulations.

It has been suggested that provincial control and appointment to some special purpose bodies such as the police commission may prevent corruption, fraud and graft in government. It is highly doubtful that the mere fact of a provincial appointment will ensure a more honest administration any more than it ensures a less political administration. It would be better to deal with such an extraordinary problem with extraordinary ministerial powers to provide for provincial intervention and trusteeship over matters which are being administered in a fraudulent or criminal way, rather than by maintaining an ongoing provincial presence at the municipal level.

Conclusion

We have attempted to indicate the limitations on the role of municipalities in the delivery of services. Those limitations are both jurisdictional in that legally, municipal authority is restricted and does not extend to many matters which are under provincial control or under the control of provincially authorized special purpose bodies; but they are also administrative in that, in many areas, the municipalities of Metropolitan Toronto are in fact administrators of provincial programmes. There are

exceptions to this administrative role but those exceptions tend to be limited and are generally restricted to the more traditionally municipal areas of parks, sewers and water.

We recommend that the jurisdiction of the municipalities be broadened not only by enabling them to assume authority for special purpose bodies if they so desire, but also by granting them more general powers and removing many of the regulations now restricting the exercise of their powers. We believe that this recommendation is vital to the enhancement of the policy role of the municipality. We suggest that the protection of minority rights and the danger of possible fraud or corruption can be assured by the province holding reserve powers to deal with those matters in extraordinary situations.

CHAPTER V - PLANNING

Introduction

In this chapter we propose to deal with the planning function in Metropolitan Toronto. Such a task is not an easy one as it involves a number of interconnecting and conflicting issues. There is, of course, the desire to enhance the policy roles of both the area municipalities and the Metropolitan Corporation vis-a-vis the province. There is, as well, the value of ensuring, from a planning point of view, capability for the implementation of provincial planning objectives. Thirdly, there would seem to be a need for the preservation of the role of the area municipalities in any relationship with the Metropolitan level of government. Finally, throughout this desire to maintain a balance between these governmental bodies is the need to protect individual rights from arbitrary government action. There are therefore at least two basic perspectives from which to examine planning issues: the intergovernmental perspective and that of individual rights.

This task is made difficult because not much thought was given to such matters when planning legislation was drafted. The general scheme of the present Planning Act of Ontario was first enacted in 1946 before regional or metropolitan governments were brought into existence. The Ontario legislation was based on The Standard City Planning Enabling Act published by the United States Department of Commerce in 1928. That Act, adopted in many states, reflected a very simplistic view of planning in providing for the enactment of a master plan (referred to by the Ontario Act as an official plan) which would govern the development of land uses with minimal change over a number of years. This approach to planning did not require a great concern for individual rights for two reasons: firstly, because the plan with its negative restrictions through zoning simply provided for an extension of private land-use controls[1] and secondly, because the plan provided a static and essentially unchanging pattern for development. No governmental action was contemplated to be required after a plan was adopted; development would proceed ultimately and relentlessly in accordance with the approved plan.[2]

The situation has, of course, changed. Plans are constantly changing, rezonings occur, and positive obligations can be imposed under The Planning Act, not only through development control under s. 35(a) of The Planning Act but also by way of minimum standards under s. 37 of The Planning Act and by virtue of The City of Toronto Act, 1936 (as amended). Where once the right of any citizen to do as he liked with his land was unquestioned, it is now accepted that it is appropriate for governments to control development opportunities, particularly since government action so largely creates the prospects for development. In addition, demolition control is a new power granted to municipalities to restrict an individual's use of land. Traditionally, it has been the Ontario Municipal Board, established first in 1906 as a board to regulate railways and to deal with limited municipal financial matters, which has provided protection for individuals against this vast array of municipal authority.

With respect to the intergovernmental perspective, the mere existence of Metropolitan Toronto has resulted in a sharing of planning powers between Metro and the area municipalities. Although the Metropolitan Corporation does not as yet have an official plan, when it does adopt one and when that plan is approved, "any official plan of an area municipality shall be amended to conform" with the Metropolitan official plan and no public work may be undertaken and no by-law passed that does not conform with the plan of the Metropolitan Corporation.[3] In addition, the Metropolitan Government has the ability to zone lands within 150 feet of Metropolitan roads and such zoning takes precedence over the zoning by-laws of area municipalities.[4] Wide powers over transportation, recreation and servicing at both the Metropolitan and area municipality levels also indicate the increasing complexity of intermunicipal planning relationships.

In provincial-municipal relationships, matters have become more complex since 1946 as well. The role of the Ontario Municipal Board has been brought into sharper focus by reason of its active stance in controlling municipal decision-making under its former Chairman, J.A. Kennedy. The role of the Board in protecting individual rights and making planning policy is indeed important. As well, circumstances have changed because The Planning Act now enables the Minister of Housing to delegate any of his authority under the Act to the Municipality of Metropolitan Toronto[5] and indeed this has been done with respect to subdivision approvals. A further change which complicates the matter is the enactment of The Planning and Development Act[6] and The Parkway Belt Act[7] which enable the province to override Metropolitan and area municipality planning and zoning with an adopted provincial plan.

Planning issues have thus become increasingly complex in terms of the rights of the individual and in terms of which level of government should be developing and establishing planning policy in the context of Metropolitan Toronto. While the protection of "property rights" may not be seen as a concern to be examined in the context of planning policy, planning decisions, we suggest, almost inevitably affect individual rights. The designation of uses and densities affects land values; the construction of highways or subways affects the rights of individuals and groups of individuals to live in a certain way and also affects the value of lands. Moreover, decisions with respect to such matters are seldom argued on the basis of individual or property rights but rather on the basis of "good planning principles" or "planning policies". We are therefore faced with the dilemma of trying to ascertain how to ensure the best method for developing and implementing public planning policy while at the same time attempting to protect private rights from abuse by that policy-making. Both issues are inexorably connected with the Ontario Municipal Board and thus a major part of this chapter will deal with the role of that Board.

It is clear that there has been room for considerable policy initiative in planning at the municipal level in Metropolitan Toronto. The recent amendments to the City of Toronto official plan and zoning by-law can only be seen as major policy initiatives.[8] The problem we must deal with, however, is not only initiative but implementation. The province ultimately controls the approval of official plans. Under s. 15(1) of The Planning Act the Minister however, must refer any part of an official plan to the O.M.B. when requested, provided that the request is not in bad faith, frivolous or for the purposes of delay. The Board may then approve or amend the part so referred.[9] Similarly, no municipal zoning by-law comes into force without the approval of the Municipal Board.[10] With regard to Metropolitan Toronto the Board therefore in practice holds hearings regarding official plans and zoning by-laws when there are objections to them.

This process brings with it delays. There is frequently a considerable lapse of time before a hearing can be convened. Situations were mentioned to us where the Board commenced a hearing because an objection was filed and at the hearing the Board discovered that the objector had changed his mind, or had been mistaken respecting the real impact of the by-law and thus wished to withdraw. In some cases the objector appeared to be only intent on achieving a delay. Although the Board can award costs in proceedings before it, it does not often do so.[11] The greater use of such an award might deter the occurrence of such problems. No substantial legislative changes would therefore be required if it were felt that the only disadvantage associated with the requirement of Board approval was occasional needless delay.

The important issue with respect to the Board, however, is not merely its impact on delaying decision-making although this is an important consideration. While any by-law passed by a municipality is, in law, retroactively effective from the date upon which the council first passed it, once the O.M.B. approves the by-law,[12] construction has frequently been delayed and costs have increased. The whole of society pays those costs. However the important issue from the perspective of this report is the impact of the O.M.B. on policy-making at the municipal level.

The Role of the Ontario Municipal Board

The role of the Ontario Municipal Board has been subject to recent controversy, particularly as a result of its decision striking down the City of Toronto's holding or "forty-five foot" by-law.[13] It is not the purpose of this purpose to evaluate the merits of the Board's decisions but it would seem necessary to examine the authority of the Board in some detail in order to understand the scope of the authority which is left to the Metropolitan municipalities within the parameters of the Board's powers.

The Planning Act, itself, gives no indication of what may or may not be relevant for the Board to consider in exercising its "approval" or appeal function.[14] No criteria are set out in the statute, indeed no standard is suggested. The Board has therefore very broad discretionary authority under the legislation to examine the actions of any municipality with respect to planning and indeed to examine "de novo" a municipality's action. It should be pointed out, moreover, that the Board is not bound by precedent - it must decide each approval of municipal action on its own merits.[15] It is clear, therefore, that the scope of municipal policy-making authority is severely circumscribed by such a provincial body.

It should be noted, however, that strong arguments have been presented in favour of the Board's jurisdiction, and indeed in one of the Board's earlier decisions regarding the approval of a by-law passed by the then Township of East York, the strongest raionale for the tribunal's authority over planning matters was enunciated: "It is the duty of this Board to determine whether or not it (the municipality's decision) will create undue hardship on others ..."[16] Similarly, the Board's decision in overturning the City of Toronto "forty-five foot" by-law indicates a concern about the rights of large real estate companies: "The rights intended to be accorded to this group under The Planning Act, as much as to residential neighbourhoods are [sic] no less."[17] This approach is very much in keeping with the former chairman's view of the Board's function when he stated that the initials O.M.B. stood for ombudsman.[18] It would seem appropriate to summarize the Board's definition of its role therefore as one of the protection of the minority rights of a developer or ratepayer, from abuse by the democratically elected council.

Such a view also suggests a further role for the Board: that of providing a forum in which all parties can be heard, after due notice, in an adversary proceeding, where an objective appraisal can be made of council's decision to ensure that it is in keeping with good planning principles.[19] When the Board acts, it generally wishes to do so on the basis of evidence of "good planning". "Good planning" seems to mean the considered opinion of qualified planning experts. The Board has taken considerable exception to the injection of political value judgments into the planning process. Thus, in the Board's ruling on the City of Toronto "forty-five foot" by-law, criticism was directed at a planning official because he admitted that he had been influenced by the views of his council, which had favoured a restriction on growth. The Board feels it can protect the public interest as well as the private interest from a "wrong" decision by council. The question must be asked as to whether the value judgment of what is "good" can ever be made solely on the basis of expertise in the field of urban planning.

While this accepted view of the Board's function may have some appeal, it has a number of serious consequences on the scope of the municipal power to legislate with respect to land uses. As already noted, the exercise of such authority by the O.M.B. results in final decision-making with respect to zoning, planning, demolition control and development agreements resting either with a provincially-appointed board or with the province itself, and not with the municipalities within Metropolitan Toronto, although the latter bodies are most visible and appear to be politically responsible for planning. In addition, the Board's authority to approve and review is so broad, as defined by the Board, that it includes not only a reexamination of the merits of council decisions and a replacement of those decisions by the Board's decisions, but includes as well the use of what are essentially judicial criteria to evaluate municipal policies. The result is a usurpation of the court's role in defining the breadth of power delegated by the province to municipalities. The O.M.B. thus plays both municipal council and supreme court.

In order to examine this last observation in more detail it is necessary to understand the nature of the judiciary's role in placing limitations on local governments. It is clear that statutory authority must have some parameters; the court's role is, in part, to define the outer limits of that statutory authority and thus to decide if a municipality is acting within its powers. It does this not only by the obvious method of interpreting statutes to ascertain if the provincial statutes grant certain authority to a municipality[20] but also by examining municipal legislation to ensure that it is passed in good faith, is enacted for a public rather than a private purpose and is not discriminatory.[21] In this way, the courts generally do not decide whether the municipal by-law is good or bad, wise or foolish, as municipal policy, but rather whether the municipal council has generally acted in a fair and proper way and within the scope of its authority. As a result, the council of a municipality cannot exercise its authority solely in an attempt to injure a particular person or confer a special private benefit. In this way, of course, the courts function as a traditional ombudsman, the original function of whom was to ensure due process in administrative decision-making. Courts do not often interfere with municipal decisions for reasons other than that the decisions are ultra vires because it cannot often be shown that municipalities are attempting to act specifically to hurt an individual or specific group and because the courts do not wish to make policy decisions for council.[22] This approach enables municipalities to act relatively freely, with little interference from the courts.

It is interesting, therefore, that the O.M.B. can claim to be an ombudsman. In doing so it has on numerous occasions contradicted what the courts have stated with respect to legal rights in planning. While the courts have, as we have seen, stated that discrimination is not a concern with respect to zoning by-laws[23] the O.M.B. believes it to be of importance and viewed it as such with respect to the "forty-five foot" by-law.[24] While the Supreme Court of Canada on two different occasions has upheld holding by-laws[25] and stated that they do not create a discrimination problem, the O.M.B. has said that holding by-laws are not appropriate for the central area of Toronto,[26] in part, at least, because they are discriminatory.

The Board, therefore, in its review and approval process severely limits the scope of the policy-making authority of municipalities in Metropolitan Toronto. In functioning as a review body it looks not only at the merits of the municipal decisions from a policy point of view but also from a legal point of view and thus incorporates legal values and concerns into its decisions.[27] It thus functions, in reality, as a court in that it has taken legal concerns which the judiciary has stated should not be protected and has incorporated them into its decision-making by viewing them as matters of policy. The issue of discrimination is thus no longer a legal problem but one of policy; the issue of compensation for down-zoning is similarly not a legal matter but one to be viewed as good or bad municipal policy.[28]

Such an exercise could be well worthwhile if the Board were in fact able to determine good or bad municipal policy or what proper planning principles are. This, however, in most cases is impossible. Planning decisions are for the most part value judgments about how a community should grow and develop. Planning decisions are wise or foolish, good or bad, it would seem, not because of some objective truth, but rather because of the values and interests which individuals or groups espouse. There is, for example, no objectively right or wrong answer respecting the building of an expressway. It may be good for those who wish to use it, bad for those whose neighbourhood it disrupts. Planning, it would seem, is fundamentally a political process which must depend on political compromise to ensure balance and harmony. Moreover, it is polycentric or multifaceted in nature - that is, a decision to do or not to do one thing has a ripple effect throughout the community. A decision for example not to build an expressway has a great effect on what should be done instead to alleviate transportation problems.[29]

Reliance on the O.M.B. may give the appearance of protection but it would not seem to give the reality of it as its subjective values, in most situations, are replacing or supporting the policies of elected councils.

None of this is to say that discrimination, in the abstract, can be supported. When adjoining lands have been zoned for very different intensities of use, one land owner has been benefited and another has been hurt. Were it left entirely to the courts, the aggrieved owner would have to present evidence that council acted on some basis deliberately designed to damnify him. We can accept the fairness of requiring the municipality to show that it had some reasonable basis for making its determination of land use. We take exception to a situation where a municipality's decision, based on fact and a reasonably held opinion, can be overturned because an appointed board happens to hold some other opinion. The rights of the individual are the rights not to be hurt by arbitrary or capricious decisions, nor decisions based on a mistaken impression of the facts, as well as the procedural rights of notice and hearing. It is more difficult to find a right to have the use of his land determined by a provincial board rather than a municipal government.

Yet there are problems to be resolved and one of those problems does require a hearing process. The two important problems are, firstly, the settling of disputes between the area municipalities and Metropolitan Toronto respecting zoning and planning matters. Secondly, there is the issue of protection for individual rights.

The Intermunicipal Problem

With respect to the first problem, the present division of power between the area municipalities and Metro with respect to planning seems to be generally satisfactory. Historically, Metropolitan Toronto has not exercised its land-use control with any great vigor, rather relying on the construction of public works. It has not, for example, as yet adopted an official plan. Our interviews indicated little dissatisfaction over a Metro zoning power within 150 feet of Metro roads although there was clear hostility on the part of area municipalities to a recent provincial attempt to expand Metropolitan power to include development control powers under s. 35(a) of The Planning Act within that 150 foot area. There seems to be an acceptance of a Metropolitan role in planning through a Metropolitan official plan. It would seem fair to say, however, that acceptance of a Metropolitan role in these areas is premised on the view that the Metropolitan Corporation would not become involved in the details of area municipality planning and would generally reflect area municipality planning in its own official plan. The problem of conflict, however, seems to be lingering just below the surface and can be seen in opposition to Metropolitan Council involvement in Scarborough subdivision planning, and in the City's central area planning. Such concern surfaced as well at the O.M.B. in a conflict between the City and Metropolitan Toronto respecting the future widening of Yonge Street. At present, any conflict that would arise respecting the approval of a Metro official plan or a Metropolitan zoning by-law would be likely to be argued before the O.M.B. because of the requirement that the O.M.B. approve such instruments.

There would seem to be three possible methods to provide a forum for resolving conflicts on the intermunicipal level. The first of these would be to maintain the status quo; the second to replace the forum of the Ontario Municipal Board with that of a political decision by the Minister; and the last to change appropriate legislation in a way which would encourage the municipalities, themselves, to resolve their disagreements.

The first of these alternatives is, of course, the easiest. In spite of the criticism suggested respecting the O.M.B., it is possible to argue that it should retain its planning jurisdiction for the limited purposes of resolving intermunicipal disputes even though such decisions also affect the rights of individuals. The Board has performed such a function in the past and has the appearance of being a fair and appropriate method of resolving disputes. The criticism suggested earlier generally went to the issue of a Board opinion overriding that of an elected council. Here,we are trying to arbitrate between two political decisions.

Moreover, as mentioned earlier, it is difficult to segregate policy and individual rights; a zoning by-law passed by Metro restricting or permitting development is one that affects the owner of the property so designated as well as the area municipality. And once again the Ontario Municipal Board is in the best position, it may be argued, to make the whole decision - balancing the competing property and public interests.

The second alternative, one mentioned in Subject to Approval,[30] is to provide that the Minister resolve disputes between municipalities with respect to both official plans and zoning by-laws. In Subject to Approval, the suggestion was that a hearing officer be provided to review the merits of the dispute and write a report to the Minister. Such an approach is more in keeping with the political nature of planning as the decision is ultimately made by a politician responsible to the Legislature. The hearing officer, moreover, would provide for both municipalities and individuals the opportunity to state positions with respect to the planning decision to be made. Subject to Approval, however, suggested that such an approach should not be used where municipalities were capable of carrying out adequate planning on their own.

The concept of a provincial minister making these decisions is somewhat contrary to the objective of strengthening the policy role of the Metropolitan government. On the other hand, the province does have a vital interest to ensure that Metropolitan planning does conform with its own views and plans on how the province generally should develop and how the Metropolitan area in particular should develop within the provincial context. It would therefore seem advisable to provide for provincial approval of the Metropolitan official plan. Such an approval by the Minister, moreover, would enable the area municipalities to make representations with respect to those provisions of the plan which affect them, assuming that the Metropolitan plan, as is presently the case under section 199 of The Municipality of Metropolitan Toronto Act, will require the conformity of the plans of the area municipalities.[31]

Given a Metropolitan plan to which all area municipalities must conform, it seems to us advisable to limit the capacity of the Metropolitan Corporation to zone land. That would continue to maintain the balance with respect to the planning function between two tiers of government within the Metropolitan area. With the ability to plan, to adopt an official plan and enforce conformity with that plan, the Metropolitan Corporation has a wide power with respect to planning and it would therefore seem appropriate to remove its authority to zone within 150 feet of Metro roads, and as well to not grant it development control powers respecting these lands. If zoning authority were thus restricted there would be less involvement at the Metropolitan level with the detail of area planning by area municipalities. Moreover, if the Metropolitan Corporation were granted authority to prepare only Metropolitan-wide plans and policies this might also prevent examination of detail. Metropolitan Toronto presently has no such restriction in its legislation. Drawing the legis-

lation might be difficult. The present thrust of Metropolitan planning does appear to be one that focuses upon the general rather than the specific.

The question of whether the limits of the Metropolitan planning power can or cannot be clearly defined in a statute at this point in time is crucial to the issue of whether the Municipal Board or a Minister must continue to resolve inter-municipal disputes. If those limits can be described in a statute, the courts can prevent any abuse of Metropolitan power. If, however, those limits cannot be satisfactorily described then some agency must be empowered to arbitrate between the different levels of government. We propose that the Minister rather than the Board do that.

Essentially, what is being suggested however is a division of powers to ensure agreement and compromise between the two tiers within the system. The Metropolitan level, being unable to pass zoning by-laws, and being restricted to Metropolitan planning, would need to ensure the political acceptability of its plan at the area municipality level and would not generally be involved in the details of planning or zoning. The area municipalities would have to plan and zone within the framework established by the Metropolitan government and could not zone in contravention of those policies. The goals of maintaining viable planning at both the Metro and area municipality level with a minimal amount of provincial interference would be served.

A refinement that might be desirable, given Metropolitan concern with respect to zoning along Metropolitan roads and access to those roads, and given that the courts have interpreted conformity with an official plan in a very broad way, is to require Metropolitan level approval of area municipality zoning and development control by-laws in those 150 foot corridors.[32] At present area municipalities need not pass by-laws permitting the same density as permitted by the Metropolitan official plan nor permit adequate access to Metropolitan roads. Here again there would be the impetus for compromise and agreement respecting such matters as neither tier could act unilaterally.

In summary, we are suggesting that intermunicipal conflicts be resolved as much as possible by encouraging the municipalities to work together by giving each level some authority over planning with the Metropolitan Toronto plan being the dominant one, and with the area municipalities alone being able to zone. The Minister as well would have authority to approve the Metropolitan plan to ensure it conforms with provincial policy. The Metropolitan plan would provide for the conformity of the plans of the area municipalities and as a result once a Metropolitan plan is approved, there would not appear to be any need for provincial approval of area municipality plans. To be noted, as well, is the special provision for Metropolitan approval of area municipality zoning and development control by-laws for areas within 150 feet of Metro roads. Finally, until the adoption and approval of a Metropolitan plan, ministerial approval for the purposes suggested above would have to be required for area municipality plans.

Protection for Individual Rights

Having discussed the relationship between Metropolitan and area planning there remains the provision of some method to ensure adequate protection for individual rights in the planning process. This problem would seem to have the same kind of alternatives for solutions as that of intermunicipal conflict. Clearly the status quo could be maintained while the options of providing the Minister with powers to protect individual rights and the option of having this matter resolved at the municipal level are both possible.

The difficulty with the status quo has already been considered; again perhaps the best argument in favour of maintaining the Municipal Board is that of its image and acceptability in the public eye as a protector of individual rights from bad councils and bad council decisions.[33] This did not, however, lead the authors to Subject to Approval to support the maintenance of that present role.

The second option of ministerial review (with hearing officers) was also rejected in Subject to Approval and would not seem appropriate, given a desire to increase the policy role of councils at the local level for it amounts to a replacement of the Board's opinions by those of the Minister. While this may be viewed as an improvement because clear political responsibility for political decisions is established, it is not a responsibility to the electorate most directly affected - that is the municipal electorate. By limiting the role of the Minister to provincial concerns respecting a Metropolitan plan which binds area plans, the political role of the province would seem to be fulfilled.

What then can be done at the municipal (Metropolitan and/or area municipality) level to ensure appropriate protection for the individual? As was noted in our discussion on delegation, municipalities in Ontario are not bound to hold hearings with respect to rezoning and/or official plan amendments which specifically affect an individual because the Ontario Municipal Board, under the scheme of The Planning Act is the body to hold hearings and make decisions. Any abolition of the role of the O.M.B. and the Minister would then result in the need for a hearing procedure at the municipal level with respect, at least, to planning decisions which affect particular individual rights.

The issue would then seem to be how to organize that hearing process. It is possible to require a hearing at the council level so that those making the decision hear the parties. Such a provision does not appear realistic given the difficulty that councils have in sitting as courts. Moreover, such a process could not realistically require council to provide written reasons and could not therefore ensure that all relevant matters were considered, and that clear policy options were examined. It would seem desirable, therefore, if council were to make the decision, to require it to first consider the report of a hearing officer on the matter. Such a person would hold a hearing for council and report to council on a suggested course of action. Council would then adopt or reject such a report and develop policy in this way.

Since planning decisions are basically political decisions, as has been pointed out, and since there are no planning principles which can ultimately guide decision-makers, it seems appropriate for the protection of the individual to provide him with a forum where he may state his case, present his views and evidence and where he may challenge the views, reports and evidence of the planners, while providing that the ultimate decision is made by the politicians. Such a provision along with the written report of the hearing officer would establish a check on the actions of municipalities, in that decisions would have to relate to a published rationale. More importantly, such a process may provide and indeed enhance the opportunity of an individual or group to use political persuasion to affect a planning decision in the political forum. Finally, it should be noted that in keeping with this political approach it would seem desirable to provide that wherever a matter presently requires Municipal Board approval, Council have the right to make the final decision but that a hearing officer review the case.

One final matter to be considered with respect to planning matters is that of delegation. We have suggested earlier that delegation could be a general power and we must therefore consider the appropriateness of that general power in the context of planning decisions. It seems appropriate for council to delegate its function of holding a hearing if it so desires. Indeed it would seem desirable and natural as hearings are now being held by committees and this would continue. The difficulty is in deciding whether such a committee could make a decision and thus adopt a plan amendment or pass a zoning by-law. In Subject to Approval, it is suggested that such a delegation is not appropriate and we agree.

The individual who is affected by a planning decision really requires two kinds of hearings. He requires a hearing before the politicians who actually make the decision, where he can try to influence their opinion. At present this is provided in most municipalities by a hearing before at least a committee of the council. That seems to us appropriate. The council as a whole is not an appropriate body and the hearing before the committee generally serves that purpose.

The individual may also require a lengthy hearing on matters of detail. He may wish to see the planner's evidence presented and present his own in rebuttal. He may have to go into elaborate matters of soil stability and precise lot boundaries. That cannot be done well before a committee of the council, and it is for that reason that we recommend a hearing officer. At present it is assumed that the municipal planning staff performs this function, but that has not been satisfactory in every instance.

This procedure will satisfy the rights set out above, viz, the right to have decisions neither arbitrary, capricious nor based on a mistake of fact, and the right to due process. As we are recommending that the O.M.B. not have jurisdiction in these matters, we would suggest that at any time when the council has failed to act on a re-zoning or official plan change application, the applicant have the right to a hearing before a hearing officer and the right to the council's consideration of the report of the hearing officer. We therefore recommend that councils pass zoning by-laws and official plan amendments after a committee of council has held a hearing and made recommendations. The by-law would not be effective until notice of its passage had been given and a reasonable time for filing objections with the clerk had elapsed. If no objections were filed, the clerk would so report and the by-law would be effective from the date of its passage. If objections were received, the objectors would be heard by a hearing officer appointed by the municipality. His report would be placed before the council, and the council would be required to confirm or vary the by-law after consideration of the officer's recommendations.

That is not to say that the general power to delegate is not applicable to planning, but rather that the hearing of such matters can be delegated along with the thrashing out of reasons and rationales but in these very important matters of planning, council must confirm, without however holding a new hearing, what has occurred. The use of the hearing officer, to whom an individual may present his case, ensures the individual that all relevant matters have been considered when council is called upon to confirm or reject the by-law. Moreover, such an approach would be very much in keeping with the "policy" approach to planning in that with a municipal hearing process and reasons given for decisions, council's role would be clear in confirming or rejecting certain policies. As well, time between the hearing by the hearing officer, and the confirmation or rejection by council would enable the political process to function and provide time for parties to crystallize the policy questions in the public eye. A certain amount of time, which is often important with respect to mobilizing views respecting planning matters, is provided by confirmation, and decisions are allowed to rest with those who should be responsible. Those decisions will be made, moreover, on the basis of compromise, reconciliation and political considerations which are the stuff of which planning policy is made, rather than illusory principles espoused by a provincially-appointed body.

We have discussed the matter of official plan amendments and rezonings which affect individual rights. Although neither the courts nor present legislation require the hearing process for more general plans, plan amendments or zoning by-laws it would seem most appropriate to require hearings before their adoption. Such a process would enable people to participate more effectively in the planning process than they do now before the O.M.B., which can be seen as both intimidating and expensive.

Mention should be made of present procedures respecting demolition permits, development control and subdivision agreements, deferred road widenings, and minimum standards by-laws. The latter presently do not require O.M.B. approval and seem to be functioning relatively well under the present system aside from problems of enforcement which seem to plague all minimum standards by-laws. With respect to demolition permits and development and subdivision agreements, an appeal is provided in The Planning Act to the Ontario Municipal Board while deferred road widenings under The Municipal Act must be approved by the Board. It would seem desirable to allow for a process similar to that outlined above so that in any event the Board would no longer serve in its appeal capacity.

Conclusion

It could be argued that the approach to planning suggested here is unfair because the municipality which will "benefit" from the planning decision is both holding the hearing and ultimately deciding the issue. It may be suggested that there is no protection from "wrong" planning decisions. We suggest that with zoning, demolition permits and development control, the municipality is often dealing with opposing parties who are involved in the issues for many different reasons. The decision is not always one, in other words, which is for the "benefit" of the municipality. When there is a case of municipal "benefit" we think that the proper agency to decide it is the municipal government. It should also be noted as well that with development control presently, and indeed with demolition permits, there is little to restrict the exercise of municipal discretion. Development agreements are hammered out in private with no public scrutiny and no public ability to appeal to the Municipal Board, while decisions for demolition permits are made in council with virtually no accountability given the lack of any political structure and the lack of published reasons. The structuring of discretion through the use of hearing officers and confirmation by council of reasons given would aid in the development of responsible planning policy at the municipal level and be an impetus for carefully thought out policy development. At senior levels, government agencies may often be seen to be acting in their own "benefit" in deciding matters before them. The granting of television licences may "benefit" Canada; similarly the granting or refusal of liquor licences may "benefit" the province. The only difference of course is that at those levels of government "benefit" is called "public interest".

In summary, then, we advocate a stronger policy role at the municipal level in planning. Our recommendations would, we believe, permit the resolution of intermunicipal conflicts without Municipal Board involvement and would also assist in the determination of private rights fairly but democratically.

MEMORANDUM

CITY OF TORONTO

TO Commissioner R. M. Bremner

FROM M. Vardin

DATE April 16, 1974.

SUBJECT 1974 Sidewalk Reconstruction Programme - Prior Authorization of Funds

As you will recall, City Council approved of our 1974 Capital Estimates on December 19, 1973, including Prior Authorization for Sidewalks in the amount of $500,000 gross and net.

An application to the Ontario Municipal Board was sent by the City's Legal Department around the end of January 1974. Shortly after that, the Ontario Municipal Board wrote to the City Solicitor for the purpose of determining as to whether or not the Metropolitan Corporation was in favour of the City's application for "interim quota", notwithstanding the fact that a certified copy of Metropolitan Executive Committee Report approving of the City's prior authorization of funds was filed with the application around the end of January 1974.

In reply to the Board's letter, the Metropolitan Commissioner of Finance indicated that the Metropolitan Corporation had no objection to the City's application for "interim quota".

Some time in the middle of March, the Board wrote again to the City pointing out that surplus funds appear to be available under the 1972 and 1973 Sidewalk Orders. The Board then raised the question on the need for the City to borrow more money in 1974 while funds appear to be available from previous years' (for your information, the relevant 1972 Order is slightly over-expended and the 1973 Order has some $36,000 available which is needed to take care of some 1973 deferred locations).

Some two weeks ago, Mr. Ward of the City's Legal Department, on the advice of Commissioner Campbell, informed the Ontario Municipal Board that there are no funds available from previous years' sidewalk orders.

I now understand that the Ontario Municipal Board, in considering again our 1974 application for prior authorization of funds for sidewalks, has raised another query, the nature of which is unknown at this time.

It would appear from the foregoing that it will be mid May, at the earliest, that we will be able to recommend the awarding of 1974 surface contracts, assuming that we can satisfy the Board's last query in the interim. While I have suspended the advertising of all surface contracts, 3 contracts were received by the Executive on March 13, 1974, 4 contracts received on March 27, 1974 (amount of deposits being held is approximately $190,000) and 4 contracts were received on April 10, 1974 (amount of deposit is approximately $96,000).

Commissioner R. M. Bremner April 16, 1974.

As you can appreciate, the situation is rather critical. I bring the foregoing to your attention in the event you wish to advise the Mayor and the Executive Committee and/or submit a formal report on this matter. If you wish to follow the matter further, I can document the history of the application by obtaining copies of all relevant correspondence.

Incidentally, our application for prior authorization of funds for the reconstruction of pavements and curbs was approved by the Ontario Municipal Board on December 28, 1973.

M. Vardin.

MV:gv

MEMORANDUM

CITY OF TORONTO

TO: Commissioner R. M. Bremner

FROM: Mr. N. Vardin

DATE: May 16, 1974

SUBJECT: Present Procedure for Approval of Capital Expenditures

Briefly, the present procedure on Capital Expenditures involves the following steps:

1. Approval of Capital Budget by City Council.

2. Submission by the City Commissioner of Finance of details of Capital Expenditures to the Metropolitan Treasurer.

3. Approval of Capital Expenditures by the Metropolitan Council.

4. Submission of applications by the City Solicitor to the Ontario Municipal Board.

5. Approval of Capital Expenditures by the Ontario Municipal Board.

As you can appreciate, delays in receiving O.M.B. approvals can occur anywhere between steps 1 and 2, 2 and 3, 3 and 4, and 4 and 5. The various delays from one step to another can have a very serious accumulative effect, but the greatest delay is normally in the issuance by the Board of a letter of approval.

Further delays can occur in the cases where unrequired debenture proceeds or unrequired debenture authorization have been approved for certain projects. Although, in the case of proceeds there is no need for the Metropolitan Council to approve of the expenditures, the City Solicitor cannot forward an application to O.M.B. until such a time as he has received a certificate on the availability of funds from the Commissioner of Finance. Also, in the case of unrequired authorization the Metropolitan Council's approval is required and a statement outlining all details of transfers prior to the City Solicitor forwarding an application to O.M.B.

To illustrate some of the delays, I would like to refer you to the following examples:

(a) <u>1971 O.M.B. Orders - Item Nos. 1 and 3.</u>

City Council approved of prior authorization of funds on October 28, 1970. Metropolitan Council approved of these expenditures on December 15, 1970. The delay of approximately seven weeks was either due to the Commissioner of Finance not forwarding the details immediately to the Metropolitan Treasurer and/or due to the Metropolitan Treasurer not submitting the details to Metropolitan Executive Committee immediately.

(b) 1972 O.M.B. Orders - Item Nos. 2 and 5.

City Council approved of the use of unrequired proceeds on December 13, 1971. Applications to the O.M.B. were forwarded on February 16 and 24, 1972, respectively. The delay of nine to ten weeks in applying to the Board were probably due to the Commissioner of Finance not referring to the City Solicitor the necessary certificate and/or the City Solicitor not forwarding the applications to O.M.B. immediately. Of course, the Board took too long to issue the final approvals.

(c) 1972 O.M.B. Orders - Item Nos. 3 and 6.

City Council approved of the overall Capital Budget on December 13, 1971. Metropolitan Council did not approve capital expenditures (set quota for the overall Metropolitan area) until April 18, 1972.

(d) 1973 O.M.B. Orders - Item 7.

City and Metropolitan Council approved capital expenditures on January 17 and February 6, 1973, respectively. Application to the O.M.B. was submitted on February 8, 1973. The Board did not issue its order until six and one half weeks later.

(e) 1974 O.M.B. Orders - Item 1.

City and Metropolitan Council approved of Capital Expenditures on November 21 and December 11, 1973, respectively. An application was made to the Board on January 24, 1974 (it should have been submitted much earlier). The Board did not issue its final order until ten weeks later.

In my view, the time span between Items 1 and 5 listed earlier on this memorandum can be reduced considerably. This will require the following:

(i) Request the O.M.B. to establish annual quota for the Metropolitan area by not later than February 15 of each year.

(ii) Request the Metropolitan Council through its Chairman to approve of the overall Metropolitan Capital Expenditures by not later than February 28 of each year.

(iii) The Commissioner of Finance should endeavour to refer details of capital expenditures to the Metropolitan Treasurer within a week after the approval of City Council.

(iv) The Metropolitan Treasurer should endeavour to submit to Metropolitan Executive Committee requests for capital borrowing by the area Municipalities within a week of receipt of such request.

Commissioner R. M. Bremner May 16, 1974

(v) The City Solicitor should endeavour to submit applications to the O.M.B. as soon as possible after approval of Capital Funds by Metropolitan Council (the Commissioner of Finance should endeavour to provide the City Solicitor with the necessary documentation as the case may be).

(vi) The Ontario Municipal Board should be requested to have a turn around period of no more than four weeks. It would be of great help if the members of the Board were to resolve queries and discrepancies over the telephone or through arranged meetings rather than through correspondence.

I shall be pleased to discuss the foregoing further with you.

N. Vardin.

NV:JS

Atts.

APPENDIX B

PROVINCIAL AND MUNICIPAL AUTHORITY TO DELIVER COMMUNITY SERVICES

STATUTE	A	B	C	D
A. Social Welfare Services				
1. The Alcoholism and Drug Addiction Research Foundation Act, R.S.O. 1970, c. 18.		X		
2. The Blind Persons Compensation Act, R.S.O. 1970, c. 46.	X			
3. The Charitable Institutions Act, R.S.O. 1970, c. 62.	X			
4. The Child Welfare Act, R.S.O. 1970, c. 64, as amended.		X		
5. The Children's Boarding Homes Act, R.S.O. 1970, c. 65.	X			
6. The Children's Institutions Act, R.S.O. 1970, c. 66, as amended.	X			
7. The Compensation of Victims of Crime Act, S.O. 1971, c. 51, as amended.	X			
8. The Construction Safety Act, S.O. 1973, c. 41.	X			
9. The Day Nurseries Act, R.S.O. 1970, c. 104, as amended.			X	
10. The Employment Standards Act, S.O. 1974, c. 112.	X			
11. The Family Benefits Act, R.S.O. 1970, c. 157, as amended.	X			
12. The General Welfare Assistance Act, R.S.O. 1970, c. 192, as amended.			X	
13. The Homemakers and Nurses Services Act, R.S.O. 1970, c. 203, as amended.			X	
14. The Homes for Retarded Persons Act, R.S.O. 1970, c. 204, as amended.	X			
15. The Homes for Special Care Act, R.S.O. 1970, c. 205, as amended.	X			
16. The Homes for the Aged and Rest Homes Act, R.S.O. 1970, c. 206, as amended.			X	
17. The Industrial Safety Act, S.O. 1971, c. 43, as amended.	X			

STATUTE	A	B	C	D
18. The Liquor Control Act, R.S.O. 1970, c. 249.	X			
19. The Motor Vehicle Accident Claims Act, R.S.O. 1970, c. 281, as amended.	X			
20. The Municipal School Tax Credit Assistance Act, R.S.O. 1970, c. 285.			X	
21. The Municipal Elderly Residents Assistance Act, S.O. 1973, c. 154.			X	
22. The Municipal Act, R.S.O. 1970, c. 284. (homes for drunkards, farms for indigents).				X
23. The Municipal Unemployment Relief Act, S.O. 1971, c. 14.			X	
24. The Ontario Guaranteed Annual Income Act, S.O. 1974, c. 58.	X			
25. The Ontario Human Rights Code, R.S.O. 1970, c. 318, as amended.		X		
26. The Pension Benefits Act, R.S.O. 1970, c. 342.	X			
27. The Vocational Rehabilitation Services Act, R.S.O. 1970, c. 484, as amended.	X			
28 The Welfare Units Act, R.S.O. 1970, c. 494.			X	
29. The Workmen's Compensation Act, R.S.O. 1970, c. 505, as amended.		X		
30. City of Toronto Act, 1972 and 1975.(removal ice and snow free of charge).				X
31. City of Toronto, 1946 (No. 2). (homes for aged).				X
B. Educational Services				
32. The Education Act, S.O. 1974, c. 109.		X		
33. The Metropolitan Separate School Act, 1953.		X		
34. The Ministry of Colleges and Universities, S.O. 1971, c. 66.	X			

STATUTE	A	B	C	D
35. The Ontario Institute for Studies in Education Act, R.S.O. 1970, c. 319.		X		
36. The Private Vocational Schools Act, R.S.O. 1970, c. 363.	X			
37. The University Expropriation Powers Act, R.S.O. 1970, c. 473.		X		
38. The University of Toronto Act, S.O. 1971, c. 56.		X		
C. Health Services				
39. The Ambulance Act, R.S.O. 1970, c. 20.			X	
40. The Anatomy Act, R.S.O. 1970, c. 21.	X			
41. The Cancer Act, R.S.O. 1970, c. 55.	X			
42. The Children's Mental Health Centres Act, R.S.O. 1970, c. 68, as amended.	X			
43. The Children's Mental Hospitals Act, R.S.O. 1970, c. 69, as amended.	X			
44. The Community Psychiatric Hospitals Act, R.S.O. 1970, c. 74.	X			
45. The Coroners Act, R.S.O. 1970, c. 87, as amended.	X			
46. The Denture Therapists Act, 1974, S.O. 1974, c. 34	X	X		
47. The Fluoridation Act, R.S.O. 1970, c. 178, as amended.				X
48. The Health Disciplines Act, S.O. 1974, c. 47.		X		
49. The Health Insurance Act, S.O. 1972, c. 91.		X		
50. The Mental Health Act, R.S.O. 1970, c. 269.	X			
51. The Mental Hospitals Act, R.S.O. 1970, c. 270.	X			

STATUTE	A	B	C	D
52. The Nursing Home Act, S.O. 1972, c. 11, as amended.	X			
53. The Ontario Mental Health Foundation Act, R.S.O. 1970, c. 322.		X		
54. The Private Hospitals Act, R.S.O. 1970, c. 361, as amended.	X			
55. The Private Sanatoria Act, R.S.O. 1970, c. 363.	X			
56. The Public Health Act, R.S.O. 1970, c. 377.			X	
57. The Public Hospitals Act, R.S.O. 1970, c. 378, as amended.	X			
58. The Sanatoria for Consumptives Act, R.S.O. 1970, c. 422.	X			
59. The Silicosis Act, R.S.O. 1970, c. 438, as amended.	X			
60. The Venereal Diseases Protection Act, R.S.O. 1970, c. 479.	X			
61. City of Toronto Act, 1944. (establish public hospitals).			X	
C. Housing Services				
62. The Housing Development Act, R.S.O. 1970, c. 213, as amended.			X	
63. The Landlord and Tenant Act, R.S.O. 1970, c. 236.	X			
64. The Municipal Act, R.S.O. 1970, c. 284, as amended(regulate heating and licence rooming houses).				X
65. The Ontario Housing Corporation Act, R.S.O. 1970, c. 317.		X		
66. The Planning Act, R.S.O. 1970, c. 349 (minimum housing standards)			X	X
67. The Residential Premises Rent Review Act, S.O. 1975, c. 12.	X			
68. City of Toronto Act, 1946 (rodent control).				X

STATUTE	A	B	C	D
69. City of Toronto Act, 1975 (housing development, license boarding housing, control discrimination against children).			X	
70. City of Toronto Act, 1936, as amended by subsequent City of Toronto Acts.				X
71. The Highway Traffic Act, R.S.O. 1970, c. 202, as amended.	X		X	X
72. The Municipal Act, R.S.O. 1970, c. 284, as amended (roads).				X
73. The Municipality of Metropolitan Toronto Act, R.S.O. 1970, c. 295, as amended. (provincial approval of roads; - with O.M.B. approval declare control access highways).			X	X
74. The Ontario Transportation Development Corporation Act, S.O. 1973, c. 66.		X		
75. The Public Transportation and Highway Improvement Act, R.S.O., 1970, c. 201. as amended.			X	
76. City of Toronto Act, 1938 (establish airports).				X
77. City of Toronto Act, 1973 (speed zones).			X	
E. Recreational and Cultural Services				
78. The Art Gallery of Ontario Act, R.S.O. 1970, c. 29, as amended.		X		
79. The Arts Council of Ontario Act, R.S.O. 1970, c. 31.		X		
80. The Athletics Control Act, R.S.O. 1970, c. 35.		X		
81. The Community Recreation Centres Act, S.O. 1974, c. 80.			X	
82. The Conservation Authorities Act, R.S.O. 1970, c. 78, as amended.		X		X
83. The Elderly Persons Centres Act, R.S.O. 1970, c. 140, as amended.			X	
84. The Horticultural Societies Act, R.S.O. 1970, c. 207, as amended.		X		

STATUTE	A	B	C	D
85. The Ministry of Culture and Recreation Act, S.O. 1974, c. 120, as amended.	X		X	
86. The Municipal Act, R.S.O. 1970, c. 284, as amended. (parks, community centres, etc.).				X
87. The Municipality of Metropolitan Toronto Act, R.S.O. 1970, c. 295, as amended. (library boards, parks).		X	X	X
88. The Ontario Heritage Act, S.O. 1974, c. 122.		X	X	
89. The Ontario Lottery Corporation Act, S.O. 1974, c. 126.		X		
90. The Parks Assistance Act, R.S.O. 1970, c. 337			X	
91. The Public Libraries Act, R.S.O. 1970, c. 381.		X	X	X
92. The Racing Commission Act, R.S.O. 1970, c. 398.		X		
93. The Royal Ontario Museum Act, R.S.O. 1970, c. 417.		X		
94. The Theatres Act, R.S.O. 1970, c. 459, as amended.		X		
95. City of Toronto Act, 1944.		X		X
F. Planning Services				
95. The Building Code Act, S.O. 1974, c. 74.			X	
96. The Municipal Act, R.S.O. 1970, c. 284, as amended. (business improvement areas).				X
97. The Ontario Heritage Act, S.O. 1974, c. 122.		X	X	
98. The Ontario Municipal Board Act, R.S.O. 1970, c. 323.		X	X	
99. The Planning Act, R.S.O. 1970, c. 349, as amended.		X	X	

STATUTE	A	B	C	D
G. Fire Services				
100. The Fire Departments Act, R.S.O. 1970, c. 169.			X	
101. The Fire Marshals Act, R.S.O. 1970, c. 172.			X	
102. The Municipal Act, R.S.O. 1970, c. 284, as amended. (establish fire depts. and make regulations re fires).				X
H. Sewage Services				
103. The Municipal Act, R.S.O. 1970, c. 284, as amended. (sewage).				X
104. The Municipality of Metropolitan Toronto Act, R.S.O. 1970, c. 295, as amended. (sewage).				X
105. The Ontario Water Resources Act, R.S.O. 1970, c. 332, as amended.			X	
I. Water Services				
106. The Municipal Act, R.S.O. 1970, c. 284, as amended. (water).				X
107. The Municipality of Metropolitan Toronto Act, R.S.O. 1970, c. 295, as amended. (water).				X
J. Administration of Justice				
108. The Administration of Justice Act, R.S.O. 1970, c. 6.	X			
109. The Legal Aid Act, R.S.O. 1970, c. 239.		X		
110. The Justice of the Peace Act, R.S.O., 1970, c. 231, as amended.	X			
111. The Police Act, R.S.O. 1970, c. 351, as amended.		X	X	

STATUTE	A	B	C	D
112. The Probation Act, R.S.O. 1970, c. 264.	X			
113. The Small Claims Court Act, R.S.O. 1970, c. 439, as amended.	X			
K. Licensing				
114. The Animals for Research Act, R.S.O. 1970, c. 22, as amended.	X			
115. The Apprenticeship and Tradesmen's Qualification Act, R.S.O. 1970, c. 24, as amended.	X			
116. The Bread Sales Act, R.S.O. 1970, c. 49.				X
117. The Dog Tax and Live Stock and Poultry Protection Act, R.S.O. 1970, c. 133, as amended.				X
118. The Gasoline Handling Act, R.S.O. 1970, c. 189.	X			
119. The Liquor Licence Act, R.S.O. 1970, c. 250, as amended.		X		
120. The Municipal Act, R.S.O. 1970, c. 284, as amended (regulate businesses).				X
121. The Real Estate and Business Brokers Act, R.S.O. 1970, c. 401, as amended.		X		
122. City of Toronto Act, 1975. (rooming houses).				X
L. Environmental and Waste Disposal Services				
123. The Environmental Protection Act, S.O. 1971, c. 86.	X	X		
124. The Municipal Act, R.S.O. 1970, c. 284, as amended (nuisances).				X
125. The Public Health Act, R.S.O. 1970, c. 377, as amended.		X	X	

STATUTE	A	B	C	D
126. City of Toronto Act, 1971. (regulate noise).				X
M. Energy Services				
127. The Power Commission Act, R.S.O. 1970, c. 354, as amended.		X		
128. The Public Utilities Act, R.S.O. 1970, c. 390.		X	X	
N. Communication Services				
129. The Ontario Educational Communications Authority Act, R.S.O. 1970, c. 311.	X			
O. Consumer Protection Services				
130. The Consumer Protection Act, R.S.O. 1970, c. 82, as amended.	X			
131. The Consumer Protection Bureau Act, R.S.O. 1970, c. 83.	X			

LEGEND

Provincial and municipal statutory authority has been divided into the following categories:

A those services for which the province sets the standards and administers or delivers the service;

B those services for which the province sets the standards and has some organization or special purpose body other than the municipalities delivering and administering services;

C those services for which the province sets the standards or approves municipal standards and provides for municipal administration or delivery and,

D those services for which the municipality sets standards and provides for municipal delivery and administration.

NOTES

PART A THE NATURE OF MUNICIPAL GOVERNMENT

Introduction

1. Ross, K.R., Local Government in Ontario Canada Law Book, Toronto, 1960, p. 6.

2. Ibid, p. 11.

3. Ibid, p. 15.

CHAPTER I THE POWER TO DELEGATE

Section 1. The Present State of the Law

1. See: Reference re Regulations re Chemicals [1943] S.C.R. 1, [1943] 1 D.L.R. 248, 275-276. See, also, Willis, J., Delegatus non Protest Delegare (1943), 21 C.B.R., 257, 257

2. Regina v. Campbell [1963] 2 O.R. 149 (C.A.)

3. Ibid.

4. Wiswell et al. v. Metropolitan Corporation of Greater Winnipeg [1965] S.C.R. 512, 51 D.L.R. (2d) 754, 51 W.W.R. 513.

5. (1971) 21 D.L.R. (3d) 286 (C.A.), [1971] 3 O.R. 614.

6. [1963] 2 O.R. 149 (C.A.)

7. R.S.O. 1970 c. 284. s. 352 and s. 354 for example.

8. Ibid., s. 241.

9. R.S.O. 1970 c. 295 s. 3.

10. (1931) 2 M.P.R. 470 (N.S.S.C.).

11. [1965] 1 O.R. 240 (H.C.).

12. Hodge v. The Queen (1883), 9 A.C. 117 (P.C.).

13. Toronto v. Virgo [1896] A.C. 88 (P.C.).

14. City of Toronto v. Mandelbaum [1932] O.R. 552 (H.C.).

15. See: Soo Mill & Lumber Co. Ltd. v. City of Sault Ste. Marie 47 D.L.R. (3d) 1 (S.C.C.) 2 N.R. 429 (Can.) and Sanbay Developments Ltd. v. City of London et al. 45 D.L.R. (3d) 403 (S.C.C.) 2 N.R., 422 (Can.) but compare Verdun v. Sun Oil Co. Ltd. [1952] 1 D.L.R. 529, [1952] S.C.R. 222, [1951] Que. K.B. 320.

16. Exceptions to this are private bills at both levels of government and the past practice of the federal parliament granting divorces.

Section 2. Specific Areas of Delegation

1. Queen's Printer, Ontario, 1975.

Section 3. A General Power to Delegate

1. R. v. Donald B. Allen Ltd., 11 O.R. (2d) 271 (D.C.).

2. Verdun v. Sun Oil Co. Ltd. [1952] 1 D.L.R. 529, [1952] S.C.R. 222, [1951] Que. K.B. 320

3. See: text supra.

4. Re Hopedale Developments Ltd. and Town of Oakville [1965] 1 O.R. 259, 47 D.L.R. (2d) 482.

5. The Planning Act, R.S.O. 1970, c. 349 s. 19, The Municipality of Metropolitan Toronto Act, R.S.O. 1970 c. 295 s. 198, The Housing Development Act, R.S.O. 1970 c. 213, s. 16.

6. Re Cadillac Development Corp. and City of Toronto (1973), 1 O.R. (2d) 20.

7. Report of The Neighbourhood Services Work Group, City of Toronto, 1976.

CHAPTER II ORGANIZATION OF MUNICIPAL CORPORATIONS

1. G.P. de T. Glazebrook, Life in Ontario, University of Toronto Press, 1968.

2. Donald C. Rowat, The Canadian Municipal System, McClelland & Stewart Limited, Toronto, 1969, p. 16 (from a radio address delivered in 1960).

3. Perhaps most bizarre is the Toronto Board of Education, where the total number of standing and special committees is in excess of thirty and where each member of the Board is permitted to both attend and vote at any committee or subcommittee meeting. The staff knows that it is to take directions from these committees, but since the membership can change considerably from meeting to meeting, it is at something of a loss to know which directions it ought to follow.

PART B THE PROVINCIAL-MUNICIPAL RELATIONSHIP AND LOCAL AUTONOMY

Introduction

1. Ontario, 1971, p. 30.

CHAPTER III FINANCE

1. The popular distinction between services to land and services to people is not one which the authorities find particularly useful or comprehensible. It is people who use the sewers, water mains and roads. While the public may, at present, continue to accept paying for the public health services provided by water pipes and sewers through the taxation of real

1. Cont'd...

property, there seems to be nothing intrinsically fair or appropriate in the system. However, there seemed to be a certain rough justice in the system when it was introduced, and that is all we mean to imply in the statement noted.

2. This is not an appropriate place to enter upon a discussion of the present causes of inflation, nor to answer the question of the extent to which inflation is caused by situations such as the most recent budget by the Government of Canada, calling as it does for an annual deficit of five thousand million dollars, or 13% of expenditures. However, the citizen and the investor can perhaps at least take note of the contents of federal and provincial budgets. If municipalities were also permitted to borrow money to pay current bills the economy of Canada would be both out of control and beyond the possibility of future control.

It is worthy of note that the legislation requiring fiscal responsibility on the part of Metropolitan Toronto is very strong. The Metropolitan treasurer must, annually, tell the Council how much money should be levied to satisfy the debenture sinking funds. If he does not, he is liable to a fine of $250.00 (Sec. 223(36)). Councillors have to see that such money is levied or be disqualified from holding public office for two years (Sec. 223 (37)). If any Council member votes to use money raised by debenture or for sinking funds for current expenditures, that member is personally liable for the debt, as well as being barred from office for two years (Sec. 239). In the same way, anyone who diverts funds required to repay Metropolitan short-term borrowings to any other Metropolitan purpose is personally liable for the debt (Sec. 217).

Those who claim on the hustings that federal and provincial treasurers who borrow for current purposes should be penalised have a solid municipal precedent.

CHAPTER IV SERVICES

1. A list of service areas which involve municipalities in Metropolitan Toronto can be found in A Study of Statutory Powers to Provide Community Services, Centre for Urban and Community Studies, University of Toronto (Toronto 1976). These were as follows:

Social Welfare Services
Educational Services
Health Services
Transportation Services
Recreational and Cultural Services
Planning Services
Fire Services
Sewage Services

1. Cont'd...

   Water Services
   Licensing
   Environmental and Waste Disposal Services
   Energy Services.

2. See supra note 1.

3. It should be noted however that the power to licence has been closely circumscribed by the courts. Municipalities, because of judicial interpretation of their powers, cannot, when licencing prohibits conduct, regulate hours or establish sub-classes without clear legislative authority.

4. In the public health field the City of Toronto for example has adopted the statutory by-law found in The Public Health Act.

5. Smith v. London (1909) 20 O.L.R. 133 (C.A.).

6. Dillon, On Municipal Corporations, (4th ed.) s. 89, quoted in Ottawa Elec. Light Co. v. Ottawa (1906) 12 O.L.R. 290 (C.A.).

7. Ottawa Elec. Light Co. v. Ottawa (1906) 12 O.L.R. 290 (C.A.).

8. Re Pride Cleaners and Dyers (1964) 50 W.W.R. 645 (B.C.S.C.).

9. Re Regional Municipality of Ottawa-Carleton and Township of Marlborough (1974) 2 O.R. (2d) 297.

10. It would seem difficult however to provide for council control over the Separate School Boards. In the case of Trustees of the Roman Catholic Separate School Board for Ottawa v. Ottawa Corporation [1917] A.C. 76, the Privy Council held that legislation suspending the Roman Catholic School Board's powers and vesting them in another body was ultra vires by reason of guarantees in the British North America Act. The desirability of providing for Council assumption of education should therefore be viewed in this context.

CHAPTER V PLANNING

1. Euclid (Village of) v. Ambler Realty Co. Ohio, Supreme Court of the United States, (1926) 272 U.S. 365.

2. Makuch, Zoning: Avenues of Reform (1973), 1 Dalhousie Law Journal 294.

3. The Municipality of Metropolitan Toronto Act R.S.O. 1970 c. 295, s. 199(6).

4. Ibid., s. 90.

5. The Planning Act, R.S.O. 1970 c. 349, ss. 44(1)(b).

6. S.O. 1973 c. 51.

7. S.O. 1973 c. 53.

8. By-law No. 34-76, and By-law No. 35-75.

9. By virtue of s. 15(1) and s. 14(1).

10. The Planning Act, s. 35(9).

11. An exception to this is the Mallory Cres. Case, footnote 16, infra.

12. See: for example Ottawa (City of) v. Boyd Builders Ltd. [1965] S.C.R. 408, 50 D.L.R. (2d) 704.

13. Re City of Toronto By-laws 347-73, and 348-73, Dec. 9, 1974, decision of the Ontario Municipal Board, R. 741805, R. 7418.

14. Although it can be argued that s. 62 of The Ontario Municipal Board Act applies to planning decisions there is still no limitation on the Board's considerations provided by that section.

15. In Re Hopedale Developments Ltd. and Town of Oakville [1965] 1 O.R.259, 47 D.L.R. (2d) 482, the Court of Appeal of Ontario indicated that the Board could not bind itself by adopting policies to be used in future decisions.

16. Re East York By-law 7633, Sept. 27, 1966, Decision of the Ontario Municipal Board.

17. Supra note 13.

18. Kennedy, "Some Observations on Planning Law" in Law Society of Upper Canada Special Lectures 1970, 159 at 162. Toronto, Richard De Boo Ltd.

19. See footnote 16 supra.

20. For example see perhaps the most famous case with respect to the limitation of municipal authority in Ontario, Morrison v. Kingston, [1938] O.R. 21, 69, C.C.C. 251, [1937] 4 D.L.R. 740 (C.A.)

21. For an example of a by-law found to be discriminatory, see Toronto v. Mandelbaum, [1932] 3 D.L.R. 604, [1932] O.R. 552, but compare Scarborough v. Bondi, [1959] S.C.R. 444, (1959) 18 D.L.R. (2d) 161.

22. An example of this can be seen in Re Cadillac Development Corporation and City of Toronto, (1973, 1 O.R. (2d) 20, 39 D.L.R. (3d) 188.

23. See note 13 supra and text.

24. Supra, note 13

25. Sanbay Developments Ltd. v. City of London et al. 45 D.L.R. (3d) 403, (S.C.C.) 2 N.R. 422 (Can.), and Soo Mill & Lumber Co. Ltd. v. City of Sault Ste. Marie 47 D.L.R. (3d) 1 (S.C.C.), 2 N.R.. 429 (Can.).

26. Supra, note 13.

27. The Board has been directed by the Courts in the past not to consider the legalities of municipal by-laws; see Re North York By-law 14,067, (1960) 24 D.L.R. (2d) 12 (C.A.), [1960] O.R. 374.

28. There clearly is not a legal duty to compensate for loss in property values from zoning. See for example Regina Auto Court v. Regina (City), (1958) 25 W.W.R. 167 (Sask.); but the OMB has refused rezonings because of a loss in value. See for example Re McGregor and Scarborough, Decision of the Ontario Municipal Board March 21, 1972 and Re Etobicoke By-law 1332, Decision of the Ontario Municipal Board, April 6, 1970 and Re City of Toronto By-law 347-73 and 348-73 supra note 13.

29. Milner, "Planning and Municipal Law" in Law Society of Upper Canada Special Lectures 1966, 77. Toronto, Richard De Boo Ltd.

30. Ontario Economic Council, Toronto, 1973.

31. Section 199 of The Municipality of Metropolitan Toronto Act presently merely states that any official plan in effect in an area municipality shall be amended to conform with the Metropolitan official plan without stating a mechanism to accomplish this. It would seem necessary therefore to provide such a mechanism. One possibility is to enable the Metropolitan Corporation to amend the plans of the area municipalities in order to effect such conformity if the area municipality does not do so within a certain period.

32. It is important to note, however, that even with the requirement of Metropolitan approval of zoning within the 150 foot area under present legislation, existing zoning by-laws could continue after the adoption of a Metropolitan plan. It would seem necessary, therefore, to provide for the Metropolitan Corporation to approve existing zoning by-laws in the 150 foot strip. Such a situation would also encourage compromise and agreement because if such a by-law were not approved by Metropolitan Toronto there would be no zoning restrictions with respect to the property.

33. Another argument in favour of retention of the O.M.B. is that it is a body to which one may appeal if council refuses or neglects to act on a request for a rezoning. While this is true, the problem can be easily circumvented by a provision for a time period for consideration of such matters.